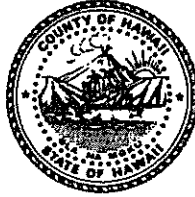


Harry Kim
Mayor



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 26, 2008

PAUL H. MURRAY & ASSOCIATES, LLC
P. O. Box 1189
Hilo, HI 96745

Gentlemen:


VARIANCE-VAR 08-003

Applicant: PAUL H. MURRAY & ASSOCIATES, LLC
Owner: JASON MANDAQUIT
Request: Variance from Chapter 25, Zoning,
Minimum yards
Tax Map Key: 1-6-098:022, Lot 27

The subject heading and listed Tax Map Key parcel number, "1-6-098:011, Lot 27", in the heading and "Variance-VAR 03-003" (text-first paragraph, second sentence) on page 1 of letter dated March 28, 2008 approving "VARIANCE-VAR 08-003" is hereby amended and corrected to read "1-6-098:22, Lot 27 and "Variance-VAR 08-003", respectively.

We apologize for any confusion caused by the typographical errors.

Sincerely,

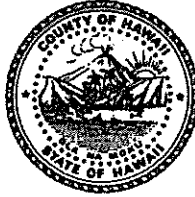

CHRISTOPHER J. YUEN
Planning Director

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xc: Real Property Tax Office-Hilo

SEP 30 2008

Harry Kim
Mayor



Christopher J. Yuen
Director

Brad Kurokawa, ASLA
LEED® AP
Deputy Director

County of Hawaii
PLANNING DEPARTMENT

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March 28, 2008

PAUL H. MURRAY & ASSOCIATES, LLC
P. O. Box 1189
Hilo, HI 96721-1189

Gentlemen:

VARIANCE-VAR 08-003

Applicant: PAUL H. MURRAY & ASSOCIATES, LLC
Owner: JASON MANDAQUIT
Request: Variance from Chapter 25, Zoning
Minimum yards

Tax Map Key: 1-6-098:011, Lot 27

After reviewing your variance application, the Planning Director certifies the approval of Variance-VAR 08-003 subject to variance conditions. The variance allows portion of "PROPOSED WATER TANK" to be constructed on Lot 27 with a minimum 4.1 feet side yard and minimum 4.1 feet side yard open space in lieu of minimum 10 feet side yard and attendant minimum 5 feet side yard open space requirements; and, allows "GARAGE" to remain on Lot 27 with a minimum 19.1 feet to minimum 19.2 feet rear yard in lieu of minimum 20 feet rear yard according to the variance application's site plan map dated January 17, 2008. The variance is from the subject TMK property's minimum side yard and attendant minimum side yard open space requirements and minimum rear yard required 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).

MAR 28 2008

BACKGROUND AND FINDINGS

1. **Location**. The referenced TMK property, Lot 27 containing 12,000 square feet, is within Block 57, Ainaloa Subdivision, Land Court Application 1053, Map 70, and situated at Keaau, 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 January 22, 2008. The variance application's site plan map is drawn to scale and prepared by Paul H. Murray & Associates, LLC. The variance site plan map, dated January 17, 2008, denotes portions of "PROPOSED WATER TANK" and "GARAGE" were constructed into the subject TMK property's minimum 10 feet side (west) yard and minimum 20 feet rear yard or "LOT 27":

The applicant's background dated January 18, 2008 states in part:

"The violation of the rear yard building setback is relatively small. The east corner of the garage encroaches into the rear yard setback 0.9 feet and the north corner encroaches 0.8 feet. The eaves (permitted projections) conform to the Zoning Code. The rear yard building setback violation is visually not perceptible from neighboring Lots or from the public view. The proposed location of the water tank encroaches 5.9 feet into the side yard building setback. Please refer to the attached Site Plan for details.

It appears from the site inspection (sic) and discussions with the contractor by the undersigned that the contractor committed an honest staking mistake. No malice and intent could be substantiated during the inspection. Neither the owners nor the contractor would have benefited as a result of the violation."

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, any walls and/or fencing, and landscaping, etc. along or straddling common boundary lines.

PAUL H. MURRAY & ASSOCIATES, LLC

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March 28, 2008

3. **County Building Records:**

Hawaii County Real Property Tax Office building records indicate 2-Building (Permits B2007-0729H, B2007-0730H), 2-Electrical Permits (E2007-1250K, B2007-1580K), and 3-Mechanical (M2007-1328H, M2007-1329H, M2007-2102H) or Plumbing Permit were issued to subject TMK property. These records disclose a 2-story dwelling, garage, and water tank were approved to be constructed upon the subject TMK property by the DPW in 2007.

4. **Agency Comments and Requirements-VAR 08-003:**

- 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) memorandum or application comments dated February 26, 2008 states 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 the applicant's submittals the first and second notices were mailed on January 24, 2008 and February 6, 2008, respectively, by the applicant. 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. The following letters or comments from adjoining property owner(s) or the general public were received:

- 6a. Letter from owners of TMK: 1-6-098:021, Lot 29 (Street Address: 16-2081 Woodrose Drive) dated January 18, 2008 supporting request for variance or variance application.

PAUL H. MURRAY & ASSOCIATES, LLC

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- 6b. Letter from owner of TMK: 1-6-098:023, Lot 25 (Street Address: 16-2075 Woodrose Drive) dated January 18, 2008 supporting request for variance or variance application.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The applicant, on behalf of the current owner, submitted the variance application to address THE position of garage and proposed water tank location upon the subject TMK property. The variance application's site plan map was prepared by a surveyor and denotes the location of the "DWELLING", "GARAGE", and "PROPOSED WATER TANK" and other site improvements upon "LOT 27". According to building permit records, Building Permit-B2007-0506H was originally issued to construct dwelling and detached water tank and Building Permit-B2007-0729H to construct carport/bathroom ("GARAGE") by the DPW. The owners became aware of building position(s) after the garage (carport) was completed and survey disclosed the garage's location required the owner to relocate the water tank. No evidence has been found to show indifference or premeditation by the builders or owners to deliberately create or intentionally allow these building encroachments to be built within the property's minimum rear yard and minimum side yard.

After reviewing building permit records and applicant's background information, it appears that a builder's or contractor's decision to relocate the garage's concrete slab or "shifted the garage footprint to avoid a topographical feature" caused a small portion of the carport or garage to encroachment into the property's minimum 20 feet rear yard and compromised the original water tank's position. The deviation of the carport's location from approved building plans assigned the second building permit compromised the water tank location denoted on the original building plans associated with the first building permit and was overlooked or went unnoticed by the builders and agencies.

ALTERNATIVES

Alternatives available to the applicant or owner to correct and/or address the building encroachments within the subject TMK property's affected minimum yards include the following actions:

1. Remove the "GARAGE" encroachment within the rear yard or redesigning or relocating the water tank to fit within the correct building envelope prescribed by the Zoning Code.

PAUL H. MURRAY & ASSOCIATES, LLC

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2. Consolidation of the subject TMK property, Lot 27 with adjoining lot (TMK: 1-6-098:023, Lot 25) and/or (TMK: 1-6-098:027, Lot 28) 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 garage encroachment into the property's minimum rear yard and proposed water tank relocation into the property's side yard are not physically and/or visually obtrusive from the adjacent property(s) (Lot 25-rear yard), or (Lot 28-side yard) or privately owned right-of-way (Woodrose Drive). It appears that the garage encroachment and water tank position(s) do not depreciate or detract from the character of the surrounding neighborhood and surrounding land patterns. Therefore, it is felt that the building encroachments into the affected rear yard and water tank's side yard 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-VAR 08-003 was acknowledged by letter dated January 25, 2008 and additional time to review building permit records issued to the subject TMK property and consider comments from adjoining property owners was necessary. The applicant agreed for an extension of time and granted the Planning Director an extension of time to render a decision on the subject variance to March 28, 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 a "GARAGE" and detached "WATER TANK" (proposed) upon "LOT 27" will not meet the property's minimum rear yard and minimum side yard and minimum side 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 "GARAGE" and "PROPOSED WATER TANK" improvements to remain or be relocated upon subject TMK property or "LOT 27" according to the variance site plan map dated January 17, 2008.

The owner(s) shall address the status of the following active permits and associated permits issued to the subject TMK property by the DPW-Building Division (Hilo). The following active or "open" permits (B2007-0729H, B2007-0730H, E2007-1250K, E2007-1580K, M2007-1328H, M2007-1329H, and M2007-2102H) issued to subject TMK property (Lot 27) shall be completed or "finaled" by the DPW-Building Division on or before September 30, 2008 and/or 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.

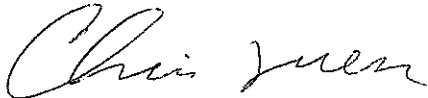
PAUL H. MURRAY & ASSOCIATES, LLC

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March 28 2008

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)