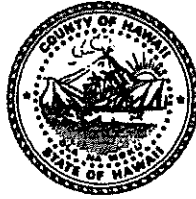


Harry Kim
Mayor



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 31, 2008

Mr. Richard McDermid
670 N. A'Ohoku Place
Hilo, HI 96720

Dear Mr. McDermid:

VARIANCE-VAR 08-004

Applicant: RICHARD McDERMID
Owners: RICHARD McDERMID, ET AL.
Request: Variance from Chapter 25, Zoning
Minimum yards

Tax Map Key: 1-5-049:176, Lot 1638-C

After reviewing your variance application, the Planning Director certifies the approval of Variance-VAR 08-004 subject to variance conditions. The variance allows portions of detached water tank with 18.71 feet side yard to remain upon Lot 1638-C in lieu of the property's required minimum 20.00 feet side yard according to site plan map or survey map dated November 13, 2007. The variance is from the TMK property's minimum side yard requirement 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, Lot 1638-C containing 1.00 acre is within Block 7, Hawaiian Paradise Park, and situated at Keaau, Puna, Hawaii. The referenced TMK street address is 15-1823, 10th Avenue.

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 a variance application, attachments, and filing fee on December 27, 2007 and January 14, 2008. 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 13, 2007, denotes portion of a "WATER TANK" was built into a minimum 20 feet side yard of "LOT 1638-C" or subject TMK property.

The applicant's background information states in part:

"We, the undersigned, as owners of the above residential property, request a variance for our water catchment tank which is situated as much as 1.29 feet into the side County Zoning Code 20-foot building setback (please see attached map showing existing conditions)."

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 upon the property and/or landscaping, etc. along or straddling common boundary lines.

3. **County Building Records:**

Hawaii County Real Property Tax Office and DPW-Building Permit records indicate Building Permit (B2005-2133H), Electrical Permits (E2006-1291H-Voided on April 11, 2007, E2007-0808H), and Mechanical (M2006-0232) or Plumbing Permit were issued to subject TMK property. It appears that the dwelling, detached garage (carport), and detached water tank were built upon "LOT 1638-C" pursuant to these building and associated construction permits issued between 2005 and 2007.

4. **Agency Comments and Requirements-VAR 08-004:**

- a. The State Department of Health (DOH) memorandum dated February 15, 2008 states:

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

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

“NO COMMENTS”

5. **Notice to Surrounding Property Owners.** The applicant submitted a copy of first and second notice of variance and proof of mailing both notices by US Mail to surrounding property owners to the Planning Department. According to the submittals, the first and second notices were mailed to surrounding property owners on December 31, 2007 and February 11, 2008, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on February 13, 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 applicant, on behalf of the owners, submitted the variance application to address or resolve the portion of the water tank built into the property's minimum 20 feet side yard. The variance application's site plan map was prepared by a surveyor and denotes the location of the dwelling, carport, and water tank improvements upon "LOT 1638-C". It appears that the applicant or current owners became aware of the building encroachment issue 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 detached water tank to be built within the property's affected side yard.

It appears that the existing dwelling, carport, and water tank improvements were constructed according to a building permit and other associated construction permits issued by the DPW to subject TMK property. It appears that during construction of the dwelling improvements between 2005 and 2006, portions of the detached water tank within the property's side yard went unnoticed by the previous owner(s) and agencies.

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ALTERNATIVES

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

1. Remove or relocate the water tank to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of Lot 1638-C with adjoining lot (TMK: 1-5-049:175, Lot 1638-B) 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 constructed approximately 2-years ago within the property's minimum 20 feet side yard are not physically and/or visually obtrusive from the adjacent property (Lot 1638-B) or privately owned right-of-way. It appears that the 2 year old water tank encroachments do not depreciate or detract from the character of the surrounding neighborhood and surrounding land patterns. Therefore, it is felt that portions of the detached water tank constructed into the property's side yard identified on the variance application's site plan map or survey map dated November 13, 2007 will not detract from the character of the immediate neighborhood or the subdivision.

The variance application was acknowledged by letter dated February 5, 2008 and additional time to consider 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 a decision on the variance application to April 4, 2008.

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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 approved and Variance-VAR 08-004 is 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 "WATER TANK" upon "LOT 1638-C" will not meet the minimum 20 feet side yard pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map or survey map dated November 13, 2007. The approval of the variance permits the "WATER TANK" to remain upon the subject TMK property or "LOT 1638-C" according to the variance site plan map dated November 13, 2007.
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", written over the printed name.

CHRISTOPHER J. YUEN
Planning Director

WRY:cs

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xc: Real Property Tax Office-(Hilo)