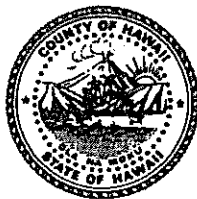


Harry Kim
Mayor



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

April 15, 2008

Ms. Cathleen A. Whitney-Fincher
6330 Westwind Way
Fallon, NV 89406

Dear Ms. Whitney-Fincher:

SUBJECT: VARIANCE-VAR 08-008
Applicant: CATHLEEN A. WHITNEY-FINCHER
Owners: WESLEY HAMMOND, ET AL.
Request: Variance from Chapter 25, Zoning
Minimum yards
Tax Map Key: 1-6-015:038, Lot 2567

After reviewing your variance application, the Planning Director certifies the approval of Variance-VAR 08-008 subject to variance conditions. The variance allows portions of a dwelling/chimney and associated roof eaves to remain on Lot 2567 with minimum 13.2 feet to minimum 15.7 feet side yard and attendant minimum 12.4 feet to minimum 12.8 feet side yard open space in lieu of minimum 20.00 feet side yard and attendant minimum 14.00 feet side yard open space according to variance application's site plan or revised survey map dated February 22, 2008. The variance is from the TMK property's minimum yards pursuant to Hawaii County Code, Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum yards, (a), and 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 3.000 acres, being Lot 2567, Hawaiian Acres Subdivision, Land Court Application 1053 (Map 49) is situated at Keaau Puna, Hawaii.

The property is zoned Agricultural (A-3a) 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, attachments, and filing fee on February 27. The variance application's site plan map is drawn to scale and prepared by Ronaldo B. Aurelio, LPLS. The revised site plan or survey map, dated February 22, 2008 denotes portions of the "DWELLING", "CHIMNEY" and associated roof eave were built into a minimum 20 feet side yard of "LOT 2567" or subject TMK property.

The background information dated February 15, 2008 states in part:

"The attached Application for Variance is being requested due to the recent discovery that (sic) the side boundary of the home was built in the setback approximately (sic) 4ft. 4 in. (see attached survey map). The reason for requesting the variance is due to the hardship this would cause and would be to (sic) costly to move the dwelling. This home was built in 1992 and the original owner who built the home is deceased."

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

3. **County Building Records:**

Hawaii County Real Property Tax Office building permit records show 2-Building Permits (921009, 011147), 3-Electrical Permits (E921760, E922083, E011449), and 1-Mechanical (M921173) or Plumbing Permit were issued by the DPW to subject TMK property. According to the foregoing, the dwelling identified on the variance site plan map or upon "LOT 2567" was built and completed pursuant to 2-building permits and associated construction permits issued circa 1992 and 2001.

4. **Agency Comments and Requirements-VAR 08-008:**

- a. The State Department of Health (DOH) memorandum dated March 10, 2008 states:

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

- b. The Department of Public Works (DPW) comments and memorandum

dated March 31, 2008 states in part:

"NO COMMENTS"

5. **Notice to Surrounding Property Owners.** The applicant submitted a copy of first and second notice sent to surrounding property owners and proof of mailing notices to the Planning Department. According to the US Postal receipts, the first and second notices were mailed on February 19, 2008 and March 17, 2008, respectively, by the applicant. Notice of the variance application was published in the Hawaii Tribune Herald and West Hawaii Today on March 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 current owners, submitted the variance application to address or resolve the dwelling encroachments within 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/patio other site improvements upon "LOT 2567". The applicant and current owners became aware of building encroachment issue during escrow. No evidence has been found to show indifference or premeditation by previous owner(s) or builders to deliberately create or intentionally allow portions of the dwelling be built within the property's minimum side yard and attendant minimum side yard open space.

It appears that the original dwelling improvements and subsequent dwelling improvements were built according to 2-building permits and other associated construction permits issued to subject TMK property. It appears that during construction of the dwelling improvements between circa 1992 and 2001 the dwelling encroachment within the property's side yard went unnoticed by the owners and agencies.

ALTERNATIVES

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

1. Remove portions of the dwelling encroachments or redesigning or relocating the dwelling to fit within the correct building envelope prescribed by the Zoning Code.

2. Consolidation of Lot 2567 with adjoining lot (TMK: 1-6-015:039, Lot 2568) and resubdivision to modify property lines and 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 portions of the dwelling constructed approximately 16 years ago within the property's minimum side yard are not physically and/or visually obtrusive from the adjacent property (Lot 2568) or privately owned right-of-way (Pueo Road). It appears that the dwelling encroachment into the property's minimum side yard do not depreciate or detract from the character of the surrounding neighborhood and surrounding land patterns. Therefore, it is felt that portions of the 16 year old dwelling built into the property's minimum side yard identified on the variance application site plan map or survey map will not detract from the character of the immediate neighborhood or the subdivision.

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 dwelling located upon "LOT 2567" do not meet the minimum side yard and attendant minimum side yard open space requirements pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map

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or revised survey map dated February 22, 2008. The approval of this variance permits the "DWELLING", "CHIMNEY", and attendant roof eave improvements to remain upon "LOT 2567" or subject TMK property according to the variance site plan map or revised survey map dated February 22, 2008. operty or transfer of title of the property by the current owner(s) to others.

4. 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-VAR 08-008 to be null and void.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

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xc: Real Property Tax Office-(Hilo)