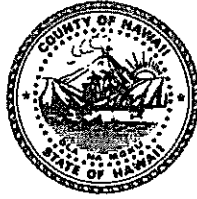


Harry Kim
Mayor



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

May 14, 2008

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

Gentlemen:

VARIANCE-VAR 08-010

Applicant: PAUL H. MURRAY & ASSOCIATES, LLC
Owners: JOHN T. McVICKAR, ET AL.
Request: Variance from Chapter 25, Zoning
Minimum yards

Tax Map Key: 2-4-060:035, Lot 20-B

After reviewing your application, the Planning Director certifies the approval of Variance-VAR 08-010 subject to variance conditions. The variance permits portions of a Dwelling/Garage to remain on Lot 20-B with minimum 17.5 feet to minimum 18.5 feet front yard and minimum 8.7 feet to minimum 9.8 feet side yard(s) in lieu of required minimum 20.0 feet front yard and minimum 10.0 side yard(s) according to the variance application's site plan map dated February 22, 2008. The variance is from the TMK property's minimum front yard and side yards pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum yards, (2)(A)(B).

BACKGROUND AND FINDINGS

1. **Location.** The referenced TMK property, Lot 20-B containing 10,050 square feet, is within Machado Acres Subdivision, Unit 1, and situated at Waiakea, Hilo, Hawaii. The referenced TMK property's address is 394 Leoiki Place.

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The property is zoned Single-Family Residential (RS-10) by the County and designated Urban or "U" by the Land Use Commission (LUC).

2. **Variance Application-Site Plan.** The applicant, on behalf of the owner, submitted variance application, attachments, and filing fee on February 27, 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 February 22, 2008 denotes portions of "DWELLING" were built into minimum 10 feet side yard of "LOT 20-B" or subject TMK property.

The applicant's background information dated February 27, 2008 states in part:

"The Owners were unaware of and would not have discovered any problems affecting this dwelling until a modern survey was conducted on February 22, 2008 by Paul H. Murray & Associates, LLC revealing the setback violations.

The violation of the side yard building setback is relatively small. The two (2) windows along the northeast side of the dwelling intrude 1.3 feet into the side yard building setback. The covered porch at the front of the house extends into the front yard building setback 2.5 feet and 1.5 feet respectively. Please refer to the attached Site Plan for details. The side and front yard building setback violations are visually not perceptible from (sic) neighboring Lots of from the public view.

It appears from the site inspection 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 of the driveway and landscaping, etc. along or straddling common boundary lines.

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3. **County Building Records:**

Hawaii County Real Property Tax Office building records show 3-Building Permits (B2006-1598H, B2007-2629H, B2007-2865H), 2-Electrical Permit (E2007-1478H, E2007-0212H), and 2-Mechanical (M2006-2458H, M2007-2119H) or Plumbing Permit were issued to subject TMK property. It appears that the dwelling improvements denoted upon the site plan map were built upon "LOT 20-B" pursuant to the building permits and associated construction permits issued by the DPW between 2006 and 2007.

4. **Agency Comments and Requirements-VAR 08-010:**

- 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) response or comments dated March 31, 2008 states:

"NO COMMENTS"

5. **Notice to Surrounding Property Owners.** The applicant submitted copy of notices sent to surrounding property owners and proof of mailing notices to the Planning Department. According to these submittals, first and second notices were mailed on February 27, 2008 and March 10, 2008, respectively, by the applicant. Notice of this 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.

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SPECIAL AND UNUSUAL CIRCUMSTANCES

The applicant, on behalf of the owner, submitted the variance application to address or resolve the dwelling encroachments within the property's minimum 20 feet front yard and minimum 10 feet side yard. The variance application's site plan denotes the location of the dwelling upon "LOT 20-B". Pursuant to the applicant's background information, "The Owners were unaware of and would not have discovered any problems affecting this dwelling until a modern survey was conducted on February 22, 2008 by Paul H. Murray & Associates, LLC revealing the setback violations." No evidence has been found to show indifference or premeditation by the previous owner or contractor/builder to deliberately create or intentionally allow portions of the dwelling to be built into the property's minimum yards.

According to the applicant's background states in part, "It appears from the site inspection and discussions with the contractor by the undersigned that the contractor committed an honest staking mistake". It appears that portions of the 1-story dwelling improvements constructed into the property's affected front and affected side yard went unnoticed by the contractor and agencies.

ALTERNATIVES

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

1. Remove the building encroachments or redesigning or relocating the dwelling to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of Lot 20-B with right-of-way (Leoiki Place) fronting the subject TMK property or adjoining lot (TMK: 2-4-060:015, Lot 18) 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.

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It appears that portions of the 1-story dwelling or encroachments built approximately 2 years ago into the subject TMK property's minimum 20 feet front yard and minimum 10 feet side yard are not physically and/or visually obtrusive or detectable from the adjacent property (Lot 18) or right-of-way fronting the subject TMK property (Leoiki Place). It appears that these 2-year old building encroachments do not depreciate or detract from the character of the surrounding neighborhood and surrounding land patterns. Therefore, it is felt that the portions of the dwelling constructed into the affected side yard denoted on the variance application's site plan map will not detract from the character of the immediate neighborhood or the subdivision.

The subject variance application was acknowledged by letter dated March 4, 2008 and additional time to consider the ownership status and nature of the variance request and application was necessary. The applicant requested an extension of time and granted the Planning Director an extension of time to render decision on the original variance request and variance application to May 23, 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.

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3. Portions of a 1-story dwelling upon "LOT 20-B" will not meet the property's minimum front yard and minimum side yard pursuant to Chapter 25, the Zoning Code, according to variance site plan map dated February 22, 2008. The approval of this variance permits the "DWELLING/GARAGE" including attached "PATIO" improvements to remain upon the subject TMK property or "LOT 20-B" according to the variance site plan map February 22, 2008.

The current owners or designee shall contact the DPW-Building Division (Hilo) to address the "active" status of the following electrical/mechanical permits: E2007-0112H, M2006-2458H, and M2007-2119H issued to subject TMK property prior to construct the dwelling upon "LOT 20-B" or subject TMK property. The foregoing "open" building permits issued to subject TMK property shall be closed or "finaled" by the DPW-Building Division on or before June 30, 2008.

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.

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

WRY:cs

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xc: Real Property Tax Office-(Hilo)