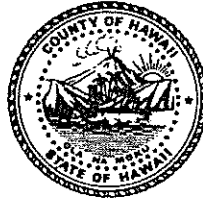


Harry Kim  
Mayor



Christopher J. Yuen  
Director

Brad Kurokawa, ASLA, LEED™ AP  
Deputy Director

## County of Hawaii

### PLANNING DEPARTMENT

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720  
Phone (808) 961-8288 • Fax (808) 961-8742

April 28, 2008

Ms. Cindy Griffey  
CENTURY 21 ALL ISLANDS  
75-5759 Kuakini Highway  
Kailua-Kona, HI 96740

Dear Ms. Griffey:

**SUBJECT: VARIANCE-VAR 08-017**  
**Representative: CINDY GRIFFEY**  
**Applicant: CINDY GRIFFEY-CENTURY 21 ALL ISLANDS**  
**Owner: WILLIS TRUST**  
**Request: Variance from Chapter 25, Zoning,**  
**Minimum yards**  
**Tax Map Key: 8-2-009:059, Lot 6**

After reviewing your variance application, the Planning Director certifies the approval of Variance-VAR 08-017 subject to variance conditions. The variance permits portion of the "2-Story Dwelling" to remain on Lot 6 with minimum 18.5 feet to minimum 18.7 feet side yard in lieu minimum 20 feet side yard according to survey map dated and signed February 25, 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.

### **BACKGROUND AND FINDINGS**

1. **Location.** The referenced TMK property, Lot 6 containing 46,647 square feet, is within McCoy Plantation, Increment 1, Part B, and situated at Ililoa and Kalamaumi Homesteads, South Kona, Hawaii. The referenced TMK property's address is 82-5999 Coffee Drive.

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

APR 29 2008

2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on March 5, 2008. The variance application's site plan map is drawn to scale and prepared by KKM SURVEYS. The variance site plan map, signed and dated February 25, 2008, denotes portions of the "2-Story Dwelling" was built into minimum 20 feet side yard of "LOT 6" or subject TMK property.

The applicant's letter and background information dated March 6, 2008 states in part:

"The purpose of this request is that the subject property located at 82-5999 Coffee Drive TMK#3-8-2-9-59 is in escrow and the seller was unaware of an encroachment until there was a survey done. The south side of the house is protruding into the side setback by 1.3 feet. The house was built 27 years ago and obviously has not been an issue to previous owners. The Seller and the realtor would like it remedied for the new owners with a variance. Thank you for your close attention."

**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 "Dry Stack Rock Walls" and landscaping, etc. along or straddling common boundary lines.

3. **County Building Records:**

Hawaii County Real Property Tax Office permit records show 1-Building Permit (K04231), 1-Electrical Permit (EK03732, EK04200), and 1-Mechanical (MK03524) or Plumbing Permit were issued to subject TMK property. It appears that the "2-Story Dwelling" on "LOT 6" was built pursuant to these building and associated construction permits issued between 1980 and 1981.

4. **Agency Comments and Requirements-VAR 08-017:**

- a. The State Department of Health (DOH) memorandum dated March 27, 2008 states:

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

- b. The Department of Public Works (DPW) memorandum dated April 4, 2008 states in part:

“We reviewed the subject application and our comments are as follows:

Buildings shall conform to all requirements of code and statutes pertaining to building construction, (see attached memorandum from our Building Division).”

The attached DPW-Building Division memorandum dated April 4, 2008 states in part:

“We oppose the approval of the application for the reasons noted below.

Others: Walls six feet or greater require a building permit and shall not protrude into adjacent property.”

5. **Notice to Surrounding Property Owners.** The representative/applicant submitted a revised list of surrounding property owners, copy of notices sent to surrounding property owners, and proof of mailing notices to the Planning Department. According to submittals and certificate of mailing(s), the first notice was mailed on March 7, and March 14, 2008, respectively; and second notice was mailed on March 31, 2008, by the applicant. Notice of the variance application was published in the Hawaii Tribune Herald and West Hawaii Today on March 28, 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-applicant, on behalf of the current owner, 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 2-story dwelling and other site improvements, on "LOT 6". According to the representative-applicant, the dwelling encroachment into the property's minimum side yard was revealed by the survey map and escrow. No evidence has been found to show indifference or premeditation by previous or current owner(s) or builders to deliberately create or intentionally allow a portion of the dwelling to be built within the property's minimum side yard.

It appears that the 2-story dwelling improvements were constructed according to a building permit and other associated construction permits issued to subject TMK property approximately 27 years ago. It appears that during construction of the dwelling improvements between 1980 and 1981, portions of the dwelling built into the property's minimum 20 feet side yard went unnoticed by the builders and agencies.

### **ALTERNATIVES**

Alternatives available to the applicant or current owner to correct the dwelling encroachment constructed into affected side yard of the subject TMK property include the following actions:

1. Remove the dwelling encroachment and/or redesigning or relocating the dwelling to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of Lot 6 with adjoining lot (TMK: 8-2-009:059, Lot 7) and resubdivision to modify property lines or adjust minimum yards, etc.

### **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 a portion of the 2-story dwelling encroachments constructed approximately 27 years ago into the property's minimum 20 feet side yard are not physically and/or visually obtrusive from the adjacent property (Lot 7) or right-of-way (Coffee Place). It appears that the 27 year old dwelling encroachments do not depreciate or detract from the character of the immediate neighborhood and surrounding building and land patterns. Therefore, it is felt that the portion of the 2-story dwelling constructed into the affected side yard identified on the variance application's site plan 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**

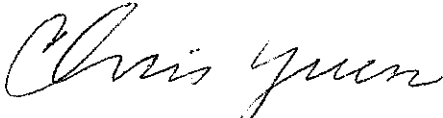
This variance application is approved subject to the following variance conditions:

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 the 2-story dwelling located upon "LOT 6" will not meet the minimum side yard pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map signed and dated February 25, 2008. The approval of this variance permits the "2-Story Dwelling" to remain upon the subject TMK property or "LOT 6" according to the variance site plan map signed and dated February 25, 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.

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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 cursive script, appearing to read "Chris Yuen".

CHRISTOPHER J. YUEN  
Planning Director

WRY:mad

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xc: Real Property Tax Office-(Kona)