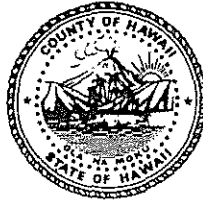


William P. Kenoi
Mayor



BJ Leithead Todd
Planning Director

County of Hawaii

PLANNING DEPARTMENT

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

March 18, 2009

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

Dear Mr. Murray:

SUBJECT: VARIANCE-VAR 08-037
Applicant: PAUL H. MURRAY & ASSOCIATES, LLC
Owners: SHIELA COOPER, ET AL.
Request: Variance from Chapter 25, Zoning
Minimum yards
Tax Map Key: 6-5-010:040

After reviewing your variance application, the Planning Director certifies the approval of Variance-VAR 08-037 subject to variance conditions. The variance to permits portion or corner(s) of "DWELLING BUILT 1972" to remain upon Lot 25 with minimum 17.5 feet front yard in lieu of required minimum 20.00 feet front yard according to the variance application's survey map signed and dated January 27, 2008. The variance is from the TMK property's minimum front yard 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 15 containing 10,004 square feet, within Kamuela Heights Subdivision, is situated at Waimea, South Kohala, Hawaii. The referenced TMK property's street address is 65-125- Laelae Place.

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, on behalf of the owners, submitted the variance application, attachments, and filing fee on June 6, 2008. The variance application's site plan map is drawn to scale and prepared by Paul H. Murray & Associates, LLC. The variance site plan or survey map dated January 27, 2008 and signed by Paul H. Murray, LPLS denotes portions of "DWELLING BUILT 1972" including portions of deck, carport and roof eaves were built into minimum 20 feet front yard of "LOT 15" or subject TMK property along Laelae Way.

The applicant's background information dated June 6, 2008 states in part:

"The single-family, wood structure and attached garage was built in 1972, according to the Hawaii County Real Property Tax Office records. Only one (1) Building Permit was on record for the structure on the subject parcel. Permit Number 926165 was issued September 8, 1992 and completed October 08, 1992. The owners were unaware of and would not have discovered any problems until a modern survey, which was conducted on January 27, 2008 by Paul H. Murray & Associates, LLC, revealed the front yard setback violation.

The violation of the front yard building setback is relatively small. The north corner of the carport encroaches into the front yard setback 2.5 feet. The eaves along this portion of the dwelling allow for the minimum clear-space of 14-ft. for permitted projections. Please refer to the attached Site Plan for details. The front yard building setback violation is visually not perceptible from (sic) neighboring Lots (sic) or from public view."

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 rock wall, fencing, easements, and landscaping, etc. along or straddling common boundary lines shared with abutting property.

3. **County Building Records:**

Hawaii County Real Property Tax Office indicates the original dwelling was constructed in 1972. These records show 1-Building Permit (926165) for dwelling deck addition and other improvements issued in 1992 was issued to subject TMK property. In sum, it appears that the position of the 37 year old dwelling upon "LOT 15" and survey map dated January 27, 2008 was constructed

pursuant to building and associated building permits issued by the County circa 1972 and 1992.

4. **Variance Application (VAR 08-037)-Agency comments and requirements:**

- a. The State of Hawaii-Department of Health (DOH) memorandum dated July 1, 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 July 14, 2008 states:

"We reviewed the subject application (sic) have no comments or objections."

5. **Notice to Surrounding Property Owners.** The applicant filed copy of first and second notices and other submittals sent to surrounding property owners and proof of mailing notices to the Planning Department. According to USPO mailing receipts the first and second notices were mailed on June 6, 2008 and July 2, 2008, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on July 3, 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 front yard. The variance application's site plan or survey map dated January 27, 2008 denotes the location of the dwelling and other site improvements upon "LOT 15". The current owners became aware of building encroachment issues after "modern survey" and map was prepared. No evidence has been found to show indifference or premeditation by the owner(s) or builders in 1972 or 1992 to deliberately create or intentionally allow the dwelling encroachments identified by the survey map to be built within the affected front yard.

It appears that the 37 year old dwelling improvements and subsequent dwelling improvements were constructed according to building permits and other associated construction permits issued circa 1972 and 1993 to subject TMK property. It appears that during construction of the dwelling improvements nearly during 1972 or 1992 the dwelling encroachment within the property's front yard along the cul-de-sac went unnoticed by the builders 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 portions of the dwelling or deck/eaves to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of Lot 15 with adjoining right-of-way (Laelae Place) 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 dwelling encroachment denoted on the survey map and approximately 27 or approximately 37 years ago within the minimum front yard are not physically and/or visually obtrusive from the adjacent property (Lot 16) or right-of-way (Laelae Way). It appears that the 37 year old dwelling including encroachments do not depreciate or detract from the character of the surrounding neighborhood, public uses, and surrounding land patterns. Therefore, it is felt that the dwelling and encroachments into the affected front yard identified on the variance application's site plan or survey map dated January 27, 2009 will not detract from the character of the immediate neighborhood or the subdivision and permitted to remain by variance.

The applicant's variance application was acknowledged by letter dated June 24, 2008 and additional time to review the application was required. The applicant granted the Planning Department and Planning Director an extension of time to decision on the variance application to March 27, 2009.

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 dwelling located upon "LOT 15" will not meet the subject TMK property's minimum front yard pursuant to Chapter 25, the Zoning Code, according to the survey map submitted with the variance application. The approval of this variance permits the "Dwelling" including carport/deck/eaves constructed upon "LOT 15" or subject TMK property to remain according to survey map dated January 27, 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.

Paul H. Murray, LPLS
PAUL H. MURRAY & ASSOCIATES, LLC

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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 "BJ Leithhead Todd".

BJ LEITHEAD TODD
Planning Director

WRY:mad
P:\WP60\WRY\FORMLETT\VAR08-037ZCSETBACKAPP.PHMALLC-COOPER

xc: Real Property Tax Office-(Kona)