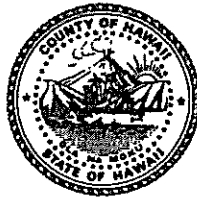


Harry Kim
Mayor



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

October 28, 2008

Mr. Kenneth P. Hahn
P. O. Box 1560
Sultan, WA 98294

Dear Mr. Hahn:

SUBJECT: VARIANCE-VAR 08-046
Applicant: KENNETH P. HAHN
Owners: KENNETH P. HAHN, ET AL.
Request: Variance from Chapter 25, Zoning,
Minimum Yards
Tax Map Key: 2-9-003:031

After reviewing your variance application, the Planning Director certifies the approval of Variance-VAR 08-046 subject to variance conditions. The variance to permits portions of "CAR PORT" with a minimum 19.01 side yard in lieu of minimum 20.00 feet side yard to remain upon the property pursuant to revised site plan map dated June 12, 2008 and associated report dated July 8, 2008. The variance is from the 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.

BACKGROUND AND FINDINGS

1. **Location.** The referenced TMK property, containing 12.30 acres, being Grant 801 to Kawainui and Kamahiai, is situated at Wailea, South Hilo, Hawaii.

The property is zoned Agricultural (A-20a) 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, on behalf of owners, submitted variance application, attachments, and filing fee on July 16, 2008 and other required submittals on September 25, 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 June 12, 2008, denotes a portion of detached "CAR PORT" was built into a minimum 20 feet side yard of the subject TMK property.

The applicant's background states in part:

"I am requesting a variance from the zoning code which may be considered a violation by the County for my existing carport which projects .99 feet into the side County Zoning Code 20-foot building setbacks (sic) of the northwest boundary.

The carport was constructed considering the best available knowledge at that time to be in conformity with County codes. A recent survey (July 8, 2008) indicates that the carport projects .99 feet into the setback. This is within an Agricultural Zoning area of larger parcels.

Granting of a variance would not be materially detrimental to the public welfare or cause substantial, adverse impact to the area's character or to adjoining properties.

Alternatives such as demolishing the structure or moving the existing rear framing by less than one foot would create a substantial hardship to me if the variance is not granted."

Note: The variance site plan map does not does not address the location or position of cesspool or septic system, fence(s), and landscaping, etc. along or straddling common boundary lines shared with abutting properties.

3. **County Building Records:**

Hawaii County Real Property Tax Office records show 6-Building Permits (971175, 990288, 990289, B2005-1228H, B2005-1262H, B2006-1543K), 3-Electrical Permits (E971516, E2005-1103H, E2006-1535K), and 2-Mechanical (M971373, M2006-1526K) or Plumbing Permits were issued to subject TMK property by County of Hawaii-Department of Public Works (DPW). After

reviewing the building records, it appears that the detached carport was permitted to be constructed pursuant to building permit-B2005-1228H and associated construction permits issued circa 2005.

4. **Agency Comments and Requirements-Variance Application-VAR 08-046:**
 - a. The State of Hawaii-Department of Health (DOH) memorandum is dated September 10, 2008. Refer to the DOH memorandum in variance file.
5. **Notice to Surrounding Property Owners.** The applicant submitted copy of notices sent to a list surrounding property owners and proof of mailing notices to the Planning Department. According to the submittals the first and second notices were sent or mailed by USPS Mail to surrounding property owners on July 18, 2008 and September 18, 2008, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on September 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-owners submitted the variance application to address or resolve the carport's position upon the subject TMK property or portions of the carport built into the property's side yard. The variance application's site plan map was prepared by a surveyor and report identifies and describes the location of the carport improvements upon the subject TMK property. It appears that the applicant and current owners became aware of building carport encroachment into the affected side yard during escrow. No evidence has been found to show indifference or premeditation by the builders or previous owners to deliberately create or intentionally allow portions of the carport to be built into the affected side yard.

It appears that the dwelling and detached carport building improvements denoted on the variance site plan map were constructed according to building permits and other associated construction permits issued to subject TMK property by the County-DWS. It appears that during construction of the detached carport circa 2005, portions of the carport built into the property's northwesterly side yard went unnoticed by the builders and agencies.

ALTERNATIVES

Alternatives available to the applicant to address and correct the existing building encroachment within the property's minimum side yard include the following actions:

1. Remove the building encroachments or redesigning or relocating the detached carport fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of property with abutting TMK property (TMK: 2-9-003:033) and resubdivision to modify a common boundary line 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 portions of a detached carport constructed approximately 3-years ago upon and into the property's minimum side yard are not physically and/or visually obtrusive from the or privately owned easement upon the abutting property ("TMK (3) 2-9-3: 33") denoted on the variance site plan map. It appears that these 3-year old building encroachments within the property's side yard do not depreciate or detract from the character of the surrounding neighborhood and surrounding land patterns. Therefore, it is felt that the portion of the detached carport built into the affected side yard identified on the variance application's site plan map and associated "REPORT (Revised)" dated "July 8, 2008" will not detract from the character of the immediate neighborhood or the subdivision.

The applicant's variance application was acknowledged by letter dated August 28, 2008 and additional time to incorporate agency comments and other submittals was necessary. The applicant, on behalf of owners, granted the Planning Director additional time to the "end of October, 2008" to complete the variance background report and render decision on the variance application.

Based on the foregoing findings and circumstances, the applicant's request for variance application 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.

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PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

The applicant's variance application is approved subject to the following variance conditions:

1. The applicant or owners, 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 detached carport constructed upon the subject TMK property will not meet the property's minimum side yard pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map and associated survey report. The approval of this variance permits the detached "CAR PORT" improvements to remain upon subject TMK property according to the variance site plan map and revised report.
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 the subject Variance-VAR 08-046 null and void.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

WRY:cs

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xc: Real Property Tax Office-Hilo