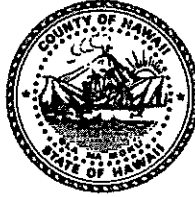


Harry Kim
Mayor



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Director

Brad Kurokawa, ASLA
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Deputy Director

County of Hawaii
PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-4224
(808) 961-8288 • FAX (808) 961-8742

September 12, 2008

Mr. Hans P. Thomsen
and Ms. Camille A. Thomsen
974 Ainako Avenue
Hilo, HI 96720

Dear Mr. and Ms. Thomsen:

VARIANCE-VAR 08-049

Applicants: HANS P. THOMSEN, ET AL.

Owners: CASIMER AH YO, ET AL.

Request: Variance from Chapter 25, Zoning
Minimum yards

Tax Map Key: 2-3-015:041, Lot G-4

After reviewing your variance application, the Planning Director certifies the approval of Variance-VAR 08-049 subject to variance conditions. The variance permits portions of an open deck attached to "HOUSE" and attendant "ROOF EAVES" to remain upon subject TMK property or Lot G-4, with minimum 9.07 feet to minimum 10.00 feet front yard open space according to the site plan submitted with the variance application. The variance request is from the property's minimum front yard required pursuant to the Hawaii County Code, Chapter 25, Zoning, 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, Lot G-4 containing 15,000 square feet, being a subdivision of Lot G, Riverside Park, Reeds Island, is situated at South Hilo, Hawaii. The subject TMK property's address is 266 Kaiulani Street.

The property is zoned Single-Family Residential (RS-15) by the County and designated Urban or "U" by the Land Use Commission (LUC).

SEP 15 2008

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2. **Variance Application-Site Plan.** The applicants submitted the variance application, attachments, and filing fee on July 24, 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 July 7, 2008, denotes portions of "BLDG." attached to "HOUSE" was constructed into and upon property's minimum 20 feet front yard of "LOT G-4" or subject TMK property.

The application includes copy a copy of Planning Department letter dated July 15, 2008, background information, and copy of building permit issued circa July 8, 1975 (B No. 62237) by the County-DPW. The applicant's background information, dated July 21, 2008, states in part:

"This letter is an attachment to the Application for Variance for subject property. We are the purchasers of this property. It is in escrow and everything has been approved, but we just discovered that the lender will not fund the mortgage because of a setback encroachment noted on the Survey (copy herewith).

The purpose of our Variance Application is to obtain a variance on that encroachment. Mr. Daryn Arai of your office suggested to me that whenever an issue such as this one, especially one that is 33 years old, was not done with any attempt to get around the rules, but rather an honest error or lack of communication, that there is a good chance a Variance may be made (sic).

It is our understanding that the language in the notation on the Building Permit (copy herewith) (sic) may have been unclear, since it states that the permit is to extend a roof over an open deck and "that portion of the deck withing (sic) the 20'0" setback area is to remain open.

The notation made no mention that the allowed portion that extended into the setback could only extend 6', only that it (sic) had to remain open. It is open to this date, but was unfortunately built approximately 4' too far into the setback. This permitted extension was inspected and signed off with on mention of the encroachment, so for all these years, the various owners have thought it was approved as built and therefore legal."

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" and landscaping, etc. straddling or near common boundary or property lines.

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3. **County Building Records:**

Hawaii County Real Property Tax Office records show 2-Building Permits (39265, 62237) were issued to subject TMK property in 1968 and 1975, respectively. According to copy of building permit (62237) attached to the application, it appears that an open deck and walkway "(Alteration)" and repairs to "Residence" were built and completed circa 1975.

4. **Variance Application-VAR 08-049: Agency Comments and Requirements:**

- a. The State Department of Health (DOH) memorandum dated September 2, 2008 states:

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

- b. The Department of Public Works (DPW) memorandum or comments dated "SEP 10 2008" states:

"NO COMMENTS"

5. **Notice to Surrounding Property Owners.** The applicants submitted copy letter(s), submittals, and notices, sent to surrounding property owners. According to these submittals and affixed USPS mailing receipts, a letter and first notice was mailed on July 23, 2008; and, second notice and attachments were mailed on August 27, 2008, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on August 31, 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 applicants-owners submitted the variance application to address or resolve the dwelling or building encroachments constructed into the property's minimum 14 feet front yard open space required by Chapter 25, Zoning. The variance application's site plan map was prepared by a surveyor and denotes the location of the dwelling, deck alteration, and attendant roof eaves and other site improvements upon "LOT G-4". The current owners became aware of building encroachment issues during escrow. No evidence has been found to show indifference or premeditation by previous owners or builders to deliberately create or intentionally allow the deck or building encroachments to be built into the property's minimum 14 feet front yard open space.

It appears that the original dwelling constructed circa 1968 and alteration circa 1975 were constructed according to 2-building permits issued to subject TMK property. And, it appears that during construction of the dwelling alteration or completion of the alteration circa 1975, portions of the deck and attendant roof eave constructed upon and into the subject property's minimum 20 feet front yard and required minimum 14 feet front yard open space went unnoticed the builders, previous and current owners, 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 open deck/roof eave encroaching into the property's minimum front yard or redesigning or relocating the dwelling's open deck and attendant roof eave to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of Lot G-4 with the publicly owned right-of-way (adjoining lot (Kaiulani Street) 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 the open wooden deck and attendant roof eaves constructed approximately 33 years ago upon and into the property's minimum front yard and attendant minimum front yard open yard space are not physically and/or visually obtrusive from the adjacent properties or publicly owned right-of-way (Kaiulani Street). It appears that these 33 year old building alteration or dwelling improvements do not depreciate or detract from the character of the surrounding neighborhood and surrounding land patterns. Therefore, it is felt that the building encroachments identified on the variance application's site plan map will not detract from the character of the immediate neighborhood or the subdivision and may remain.

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 open wooden deck and attendant roof eaves attached to a dwelling or "HOUSE" built upon "LOT G-4" will not meet the minimum front yard open space pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map dated July 7, 2008. The approval of this variance permits the "BLDG" or open wooden deck and attendant roof eaves to remain upon on subject TMK property or "LOT-G-4" according to the variance site plan map dated July 7, 2008.

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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

P:\WP60\WRY\FORMLETT\VAR08-049ZCSETBACKAPP.THOMSEN-AHYO

xc: Real Property Tax Office-(Hilo)

Adams Mortgage
15-2805 Opae Street
Pahoa, HI 96778