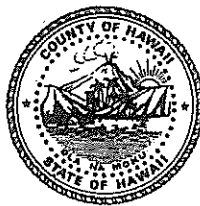


William P. Kenoi
Mayor



Daryn S. Arai
Acting 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

January 21, 2009

Mr. and Mrs. Jared D. Furuli, Jr.
1875 Kalanianaʻole Avenue, Apt. 108
Hilo, HI 96720

Dear Mr. and Mrs. Furuli

VARIANCE-VAR 08-061

Applicants: JARED D. FURULI, ET AL.

Owners: JARED D. FURULI, ET AL.

Request: Variance from Chapter 25, Zoning
Minimum yards

Tax Map Key: 2-5-004:094, Lot 89

After reviewing your variance application and other submittals, the Planning Director certifies the approval of Variance-VAR 08-061 subject to variance conditions. The applicants or owners are requesting variance to allow portions of permitted 1-story dwelling to be constructed upon Lot 89 with a minimum 8.5 feet to minimum 14.5 feet front yard and attendant minimum 5.00 feet to minimum 10.00 feet front yard open space along Wilder Road in lieu of minimum 15.00 feet front yard and attendant minimum 10.00 feet front yard open space requirements pursuant to the application's plot plan submittal. The variance is from the TMK property's minimum front yard and required minimum front yard open yard space pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 7, Section 25-5-7, Minimum yards, (1)(A), and 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 being Lot 89 of Kaumana House Lots containing 6008 square feet, Grant 10525 to Misao Miyamoto, is situated at Kaumana, South Hilo, Hawaii. The referenced TMK property's address is 18 South Wilder Road.

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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 Plans**. The applicants/owners submitted the variance application and attachments to address the position of the dwelling permitted to be constructed upon the subject TMK property by the County. The required variance filing fee was waived by the Planning Director/Planning Department. The copy of the approved building permit's site plan map and revised site plan map are both drawn to scale denoting the position of the 1-story dwelling.

The applicant's application states in part:

"REQUEST: variance from minimum yards and open yard space."

The variance application includes a copy of the original approved site plan map issued Building Permit (B2008-0925H) and subject TMK property. The revised site plan map denotes the position of the permitted dwelling being constructed into the minimum yards of the subject TMK property.

Note: The variance site plan maps do not identify or address the location or position of any fencing and other site features.

3. **County Building Records:**

Hawaii County Real Property permit records show 1-Building Permit (B2008-0925H), 1-Electrical Permit (E2008-1279H), and 2-Mechanical (M2008-0981H, M2008-1045H) or Plumbing Permits were issued to subject TMK property during 2008. A copy or extract of the site plan reviewed and approved by the Planning Department on "4/9/08" associated with building permit application and Building Permit-B2008-0925H issued on May 5, 2008 by the County of Hawaii-DPW was submitted with the variance application.

4. **Variance Application-VAR 08-061-Agency Comments and Requirements:**

- a. The State Department of Health (DOH) memorandum dated November 26, 2008 states:

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

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- b. The Department of Public Works (DPW) memorandum dated December 15, 2008 states:

“We have reviewed the subject application forwarded by your memo dated November 18, 2008 and require approval of the application be conditioned as noted below.

All new building construction shall conform to current code requirements. The minimum setbacks shall be maintained as follows: residential structures-3 ft. side and 3 ft. rear; commercial structures-5 ft. side and 5 ft. rear.”

5. **Notice to Surrounding Property Owners.** The applicants-owners submitted copy of first and second notices sent and proof of mailing both notices to surrounding property owners. The attached USPO postal receipts indicate first and second notices were mailed on October 17, 2008 and December 2, 2008, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on November 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

Hawaii County Real Property permit records show 1-Building Permit (B2008-0925H) was issued by the County-DPW on May 5, 2008. According to the owners and project designer, it appears that the size and design of the dwelling, floor plan, and design and location of the septic system improvements, etc. were prepared utilizing metes and bounds and TMK information given by County staff before detailed drawings for the new dwelling and wastewater plans were completed for the building permit application and agency review. Further, during review of the detailed drawings of the dwelling improvements and site plan attached with the building permit application, County staff and other agencies failed to note inconsistencies between the site plan's metes and bounds, lot size, location, etc. and County TMK maps during review of the plans and building permit application ultimately assigned Building Permit B2008-0925H by the County-DPW in May 2008. During construction or “layout” of the dwelling's foundation by the owner's contractor inconsistencies regarding building permit's approved site plan and portions of the dwelling being built into the property's front yard were disclosed to the owners.

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Subsequent to the above, the owners contacted the Planning Department during October and November 2008 to review the approved site plan associated with B2008-0925H. The Planning Department requested a revised site plan denoting the position of the dwelling be submitted for review. The revised site plan reveals that portions of dwelling being constructed upon the subject TMK property encroach into the subject TMK property's minimum yards prescribed by the Zoning Code.

The dwelling improvements upon the subject TMK property are permitted pursuant to detailed building construction plans approved by the Building Permit B2008-0925H. The owners are requesting variance to allow the dwelling to be completed in accordance with Building Permit B2007-1688H upon subject TMK property; and, permit portions of the permitted dwelling including associated roof eaves to be built and remain within subject TMK property minimum yards according to the revised site plan map submitted with the variance application.

ALTERNATIVES

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

1. Redesigning or the permitted dwelling to fit within the subject property's building envelope prescribed by the Zoning Code.
2. Consolidation of subject TMK property with the County owned right-of-way fronting the property 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.

Given the above circumstances and alternatives, the applicant's request for variance could have been avoided during review of the detailed building plans by the Planning Department and other agencies before the building permit was issued. Other options include revising or re-designing or abbreviating the size of the approved dwelling to fit within the subject TMK property's building envelope, etc. However, after reviewing the request for variance and noting the owners and contractor's circumstances, it is felt that portions of the 1-story dwelling including roof eaves encroaching into the property's minimum front yard along Wilder Road will not depreciate or

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significantly detract from the character of the surrounding neighborhood, public uses, and surrounding land patterns. Therefore, after considering the circumstances requiring the variance to allow completion of the dwelling and other issues cited by the owners, in this instance, it is felt that portions of the permitted dwelling being constructed within the property's minimum front yard will not detract from the character of the surrounding land patterns and immediate neighborhood.

Based on the foregoing findings and circumstances regarding issuance of the building permit upon the subject TMK property with unusual lot geometry and lot size, the applicants or owners request for variance would be consistent with the general purpose of the zoning district and the intents and purposes of the Zoning Code, Subdivision Code and County General Plan. Given the circumstances requiring a variance to permit the position of the dwelling improvements, it is felt that the request will not be materially detrimental to the public's welfare and will not cause substantial adverse impact to the area's character and adjoining properties.

The variance application was acknowledged by letter dated November 18, 2008 and additional time to review and consider agency comments was necessary. The applicant agreed to grant an extension of time to Planning Director to render decision on the applicant's request for variance and application to January 31, 2009.

Based on the foregoing findings, the request for 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. According to revised site plan map, portions of the 1-story dwelling being constructed upon subject TMK property pursuant to Building Permit-B2008-0925H cannot not meet the TMK property's minimum front yard and attendant minimum open yard space pursuant to Chapter 25, the Zoning Code. This variance permits the 1-story dwelling issued Building Permit-B2008-0925H to be built upon subject TMK property in accordance with the revised site plan map.
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 subject Variance null and void.

Sincerely,



DARYN S. ARAI
Acting Planning Director

WRY:cs

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xc: Real Property Tax Office-(Hilo)