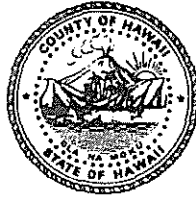


Harry Kim
Mayor



Christopher J. Yuen
Director

Brad Kurokawa, ASLA
LEED® AP
Deputy Director

County of Hawaii
PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043
(808) 961-8288 • FAX (808) 961-8742

April 10, 2006

Ms. Kelly Shaw, Realtor
Re Mr. Sidney W. Knight
75-5737 Kuakini Highway, Suite 102
Kailua-Kona, HI 96740

Dear Ms. Shaw:

VARIANCE PERMIT NO. VAR 02-068
Applicant: SIDNEY W. KNIGHT
Owners: SIDNEY W. KNIGHT, ET AL.
Request: Variance from Minimum Yards
Pursuant to Chapter 25, Zoning
Tax Map Key: 7-6-025:029

After reviewing variance application and information submitted by the applicant, the Planning Director certifies the approval of the variance request subject to conditions. Variance Permit No. 02-068 allows the storage building improvements to remain on the subject property, "AS-BUILT", with a minimum 1.5 feet side yard and attendant 1.5 feet side yard open space in lieu of minimum 8 feet side yard and attendant minimum 4 feet side yard open space requirement according to the variance site plan drawing submittal. The variance request is from the subject property's minimum side yards pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum yards, (a) (1) (B), and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open space requirements, (a).

BACKGROUND AND FINDINGS

1. **Location.** The subject property, Lot 29 containing an aggregate area of 10,311 square feet, is located within the Kamani Tree Subdivision, File Plan 1970, and situated at Holualoa 1 & 2, North Kona, Hawaii. The TMK property's address is 76-714 Kiipohaku Street, Kailua-Kona, Hawaii, 96740.

The property is zoned Single-Family Residential (RS-7.5) by the County and designated Urban ("U") by the Land Use Commission (LUC). The property is within the SMA. The property does not abut the shoreline.

2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on or about October 15, 2002 to the Kona Planning Department. The variance application's site plan map drawing is drawn to scale and appears to be a copy of the site plan approved by the Planning Department on or about June 17, 2002. This variance site plan map denotes the proposed location of the storage building on subject TMK property.

The applicant's background states in part:

"THE STORAGE BUILDING IS IN THE SETBACK ON ONE SIDE. THIS LOCATION IS THE ONLY SPACE AVAILABLE FOR THE BUILDING ON THE PROPERTY."

3. **Agency Comments and Requirements-VAR 02-068:**

- a. The State Department of Health (DOH) memorandum dated November 20, 2002 states:

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

- b. The Department of Public Works (DPW) memorandum dated November 6, 2002 states.

"We have reviewed the subject application and offer the following comment:

Building

1. Please refer to the attached Building Division comments dated November 04, 2002."

The November 4, 2002 DPW comments state in part:

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

The Building #020859, #025887, Electrical #E020734, E026339 and Plumbing #M020732 permits for the subject dwelling has no status of Inspections.

Others: Storage Building permit #025887 was permitted per plans.
Construction and location shall be as approved building permit plans.”

4. **Notice to Surrounding Property Owners.** Proof of mailing a first and second notice was submitted to the Planning Department. For the record, it appears that first and second notices were mailed on October 16, 2002 and August 8, 2005 by the applicant.

5. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. The following objection letter(s) from surrounding property owner(s) were received from attached to a letter from Kris Johnson-Agent for Kamani Trees AOA:
 - a. Objection letter/comments from Jim Flood.

 - b. Objection letter or comment dated August 22, 2005 received from Mark VerStraten.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The applicant, on behalf of the original applicant/owner is trying to address an earlier letter sent to the original owner (Knight) dated October 14, 2002 by the Planning Department regarding the storage building's position.

According to the applicant and County records, 2-building permit(s)-020859 and 025887 to construct the dwelling and storage building, respectively, were issued by the DPW during 2002. The original site plan submitted by the applicant (Knight) identifies the storage building's proposed location; and, that this site plan was approved by Planning Department and issued a building permit 025887 by the DPW-Building Division-Kona. However, the storage building was sited and constructed within a minimum side yard and attendant minimum side yard open space required by the Zoning Code. It appears that the storage building was permitted pursuant to a building permit (025887) issued in 2002; and, it appears that preliminary building inspections of the storage building foundation, framing, etc. during 2002 and other associated construction permits by the agencies did not disclose any building encroachment issues within the property's minimum yard or permit irregularities. (Note: Any "open" building and construction permits issued to the subject TMK property must be closed by the applicant or designee prior to future sale of the property-Refer to Variance Conditions).

ALTERNATIVES

Alternatives available to the applicant to address and correct the existing building encroachments include the following actions:

1. Remove the building encroachments or relocate the storage building elsewhere on the property within the building envelope prescribed by the Zoning Code.
2. Consolidation of the subject TMK property with an adjoining property and resubdivision and adjustment of minimum yards from revised boundary lines, 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 the storage building is not visually obtrusive from adjoining property or right-of-way. The building encroachments were revealed after the storage building was completed, and/or complaint was filed regarding the position of the storage building before or during escrow to sell the property. The storage building is not considered to be a living space and the building style of the building within the affected side yard does not detract from the character of the surrounding neighborhood and land patterns and the applicant/current owner(s) are required to address and County building or UBC requirements. Therefore, it is felt that the existing 4 year old storage building within the affected side yard will not detract from the character of the immediate neighborhood or the subdivision.

The subject variance application was acknowledged by letter dated October 28, 2002 and additional time was requested by the applicant to send the required second notice to surrounding property owners was necessary. The applicant's agent agreed to extension of time to April 30, 2006 to review building records and render decision on the subject variance application.

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.

Ms. Kelly Shaw, Realtor

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PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

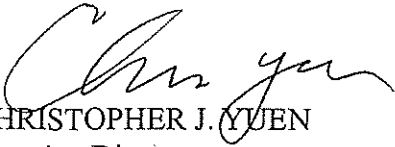
This variance request is approved subject to the following conditions:

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/owner, 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 existing storage building, "AS-BUILT", on Lot 29 will not meet Chapter 25, the Zoning Code's minimum side yard and attendant minimum side yard open space requirements. The approval of this variance allows the existing storage building to remain, "AS BUILT", on Lot 29 pursuant to the variance site plan map.
4. The applicant/applicant's representative or current owners shall address the status of the building permit-BP 020859 and BP 025887 and associated electric permits-E020734 and E026339 issued to subject TMK property by the DPW-Building Division. The "open" building permit(s) and electric permits shall be closed or "finaled" by the DPW-Building (Kona) on or before September 1, 2006 and/or sale of the property or transfer of title of the property by the current owner(s) to others.
5. Future 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 this Variance Permit null and void.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

WRY:cd
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cc: Real Property Tax Office-Kona
James H. Flood
Mark VerStraten
Kris Johnson