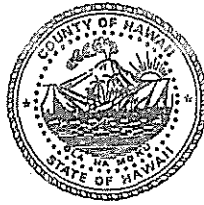


Harry Kim
Mayor



Christopher J. Yuen
Director

Roy R. Takemoto
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

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

September 6, 2005

Mr. Terry Schoneberg
SUNRISE PROPERTIES, INC.
101 Aupuni Street, Suite 106
Hilo, HI 96720

Dear Mr. Schoneberg:

VARIANCE PERMIT NO. VAR 04-005
Applicant: TERRY SCHONEBERG
Owners: ALAN MEDEIROS, ET AL.
Request: Variance from Minimum Yards
Pursuant to Chapter 25, Zoning
Tax Map Key: 1-5-020:085, Lot 700

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to variance conditions. Variance Permit No. 04-005 allows portions of a dwelling ("HOUSE") to remain, "AS-BUILT", on subject TMK property, Lot 700, with a minimum 15.72 feet side yard and attendant or corresponding minimum 13.22 feet side yard open space, in lieu of the minimum 20.0 feet side yard and attendant minimum 14.0 feet side yard open space requirements, respectively, according to the variance site plan dated and signed on October 10, 2003. The "SHED" or other encroachments denoted on the applicant's site plan map will be removed. The variance request is from the subject TMK's minimum side yard and attendant side yard open space requirements pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum yards, (a), and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open space requirements, (a).

BACKGROUND AND FINDINGS

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1. **Location.** The subject property, Lot 700 consisting of 1.000 acre, is located within Block 8 of Hawaiian Paradise Park Subdivision, and situated at Keaau, Puna, Hawaii.

The TMK property was zoned Agricultural (A-1a) by the County in 1967 and designated Agriculture "A" by the Land Use Commission (LUC).

2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on or about December 17, 2004. The variance application's site plan map was prepared by The Independent Hawaii Surveyors and is dated October 10, 2003 and drawn to scale. This map denotes the location of the dwelling, shed, and other building encroachments, "AS-BUILT" into the minimum side yard and attendant side yard open space requirements.

The applicant's background states in part:

"The home was originally built in 1997. My clients did not discover until (sic) a few months ago that the home was built within the setbacks. PLEASE REFER to the attached Surveyors map of the property (sic) The home projects 4.28 feet into the said setback and a shed in the back extends 7.34 feet, BUT THIS SHED WILL BE REMOVED, so we are only asking for variance on the home itself."

Note: The dwelling's ("HOUSE") wastewater system was not denoted or identified on the variance site plan map. The variance request does not address the location of "ROCK WALL" or other walls or fencing improvement on or straddling common boundary lines or any other issues related to property use. Any existing perimeter walls and/or landscape materials straddling TMK boundary lines or other boundary encroachments must be addressed and resolved by applicant or between the affected parties or between legal property owner(s).

According to the applicant, the "SHED" building identified on the variance application's site plan map will be removed.

3. **Agency Comments and Requirements-(VAR 04-005):**

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- a. The State Department of Health (DOH) memorandum dated January 23, 2004 states:

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

- b. The Department of Public Works (DPW) memorandum dated January 29, 2004, states in part:

"We have reviewed the subject application forwarded by your memo dated January 7, 2004 and have the following comments:

Approval of the application shall be conditioned as note below.

The building permit no. 031461 for the subject dwelling was never Finaled. Please refer questions regarding the permit to the Building Division at 961-8331."

4. **Notice to Surrounding Property Owners**. The applicant submitted copy of first and second notice sent to surrounding property owners and other submittals on August 9, 2005. According to the submittals and mailing receipts, it appears that the notices were mailed on December 12, 2004 and August 8, 2005, respectively, by the applicant.
5. **Comments from Surrounding Property Owners or Public**. No further written agency comments were received. No objections from surrounding property owners or public were received.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The applicant purchased the 3 year old dwelling and other improvements during 2000 before the survey of the property and survey map was completed. The applicant, on behalf of the current owner, is trying to resolve the building encroachment issues built in 1997. The variance application's site plan map was prepared by a surveyor and denotes the location of the dwelling, work shop (detached garage), and other site improvements, "AS BUILT" on "LOT 700". The site plan identifies the dwelling's and workshop's building position together with other building encroachments within the one of the property's minimum 20-foot side yards and attendant open

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yard requirements pursuant to the Hawaii County Zoning Code. The current owner became aware of dwelling and workshop building encroachment issues after the survey map was completed or during escrow to purchase the property. No evidence was found showing indifference or premeditation by previous owner(s) or previous builders to deliberately create or intentionally allow the dwelling and other building encroachments to be constructed within respective side yards. The dwelling, work shop (garage), and water tank improvements were built under valid building permit(s) and other construction permits issued by the County; and, inspections by the agencies did not disclose any building encroachment issues or building setback irregularities.

ALTERNATIVES

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

1. Remove the "HOUSE" encroachments or redesigning or relocating the dwelling and attendant roof eaves to fit within Lot 700's "building site" or building envelope prescribed by the Zoning Code and identified on the variance site plan map. The applicant recently submitted a site plan map and written annotations saying on August 9, 2005 showing "SHED"-destroyed and Removed"(sic).
2. Consolidation of subject property-Lot 700 with adjoining property-Lot 699 and resubdivision of the resulting consolidated property to modify property lines and adjust minimum side 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 or "HOUSE" encroachment into the respective side yard and attendant open space requirements are not physically and visually obtrusive from adjoining property (Lot 699) or right-of-way. These dwelling encroachment was built before the survey map was completed or during escrow to sell the property. It appears the 7 year old dwelling encroachments within the affected side yard and attendant open side yard requirements were caused by building mistake(s) during 1997 to position the foundation of the dwelling. According to the applicant, the dwelling and "SHED" encroachment into the affected side yard were not

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detected when the owners purchased the property in 2000. The encroachment issues were not revealed until after the survey of the property and map was completed during 2003. It is felt that the 7 + year old dwelling encroachments into the affected side yard have not affected or altered the character of the subdivision and surrounding land patterns. Therefore, it is felt that the dwelling encroachments into the affected side yard will not detract from the character of the immediate neighborhood or subdivision. The "SHED" encroachments into the side yard will be addressed by the applicant and will be removed (Refer to variance conditions).

The subject variance application was acknowledged by letter dated January 7, 2004 and additional time was requested by the applicant to submit proof of mailing of both notices to surrounding property owners and consider agency comments. The applicant recently submitted proof of mailing notice(s) to surrounding property owners and requested additional time to render a decision on the subject variance.

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 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/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 "HOUSE" or dwelling on the subject TMK property or Lot 700 will not meet Chapter 25, the Zoning Code's minimum side yard(s) and attendant minimum open yard requirements. The approval of this variance allows dwelling or dwelling encroachments within the respective side yard identified on the variance application's site plan map to remain, "AS BUILT", on the subject TMK

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property (LOT 700). The "SHED" identified on the variance site plan map will be demolished or removed by the applicant or current owner(s) prior to any change in title or sale of subject TMK property (LOT 700).

4. The outstanding building permit (BP No. 031461) issued to the subject TMK property (Lot 700) shall be closed or "finaled" by the DPW-Building Division prior any change in title or future sale of the property.
5. No permit to allow an ohana dwelling shall be granted on subject TMK property (Lot 700), subject to provisions of the Hawaii County Zoning Code or State Law which may change from time to time.
6. Future 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 this Variance Permit null and void.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

WRY: je

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cc: Real Property Tax Office-Hilo
Planning Dept.-Kona