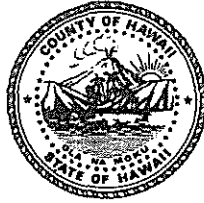


Harry Kim  
Mayor



Christopher J. Yuen  
Director

Brad Kurokawa, ASLA, LEED™ AP  
Deputy 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 27, 2006

Mr. Byron J. Scott and  
Ms. Nancy J. McNamar  
77-6456 Sea View Circle  
Kailua-Kona, HI 96740

Dear Mr. Scott and Ms. McNamar:

#### **VARIANCE PERMIT NO. 05-086**

**Applicants:** BYRON J. SCOTT/NANCY J. MCNAMAR  
**Owners:** BYRON J. SCOTT/NANCY J. MCNAMAR  
**Request:** Variance from Minimum Yards,  
Pursuant to Chapter 25, the Zoning Code  
**Tax Map Key:** 2-5-042:099, Lot 8

After reviewing your variance application and the information submitted, the Planning Director certifies the approval of Variance Permit No. 05-096 subject to variance conditions. The variance permits a "HOUSE" and "WATER TANK" to remain, "AS-BUILT", on Lot 8 with a minimum 6.75 feet side yard(s) and associated minimum 2.83 feet side yard open space and detached water tank with a 13.10 feet rear yard and 6.22 feet side yard, respectively, in lieu of the minimum 15.00 feet rear yard, minimum 8.00 side yard(s), and attendant minimum 4.00 feet side yard open space requirement according to the variance site plan map dated July 15, 2005. The variance is from the TMK property's minimum yard and attendant open yard space requirements pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum yards, (a), Section 25-5-77, Other regulations, 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 8 containing 7500 square feet, Block 9, Kaumana City Subdivision, Ponahawai, South Hilo, Hawaii. The TMK property's address is 25-178 Hana Street.

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JAN 30 2006

The property is zoned Agricultural (A-20a) by the County and designated Agriculture ("A") by the State Land Use (SLU) Commission. The property was issued ohana dwelling permit (OD 92-206) to convert a dwelling into a duplex (duplex conversion) subject to conditions according to a permit letter dated September 4, 1992.

2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee to the Planning Department on or about September 15, 2005. The variance application's site plan or map drawing is drawn to scale and dated July 15, 2005. The application's site plan or survey map was prepared by The Independent Hawaii Surveyors, LLC, denotes the property's building site or building envelope and identifies the building improvements and other site improvements on "LOT 8".

**Note:** The variance request and site plan map does not identify any cesspool location(s) or Independent Wastewater System (IWS) for the dwelling improvements located on "LOT 8".

The applicant's attachment dated September 9, 2005 states in part:

"We are requesting this variance based on the hardship it would require for us to rectify these setback violations. The home has been in place for more than 20 years and the carport and adjoining ohana apartment, which was built with permits, have been there for more than 10 years. The property is for sale at this time and we hope to rectify this situation before we (sic) it's time to close."

3. **Agency Comments and Requirements-(VAR 05-086):**

- a. The State Department of Health (DOH) memorandum, dated October 17, 2005, states:

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

- b. The Department of Public Works (DPW) application comments are dated November 9, 2005 and state:

"NO COMMENTS"

4. **Notice to Surrounding Property Owners.** Proof of mailing a first and second notice to a list of surrounding property owners was submitted to the Planning Department. According to the applicant and mailing receipts, it appears that the first and second notice(s) were mailed on September 12, 2005 and October 14, 2005, respectively.
5. **Comments from Surrounding Property Owners or Public.** No further written agency comments or objection letters from surrounding property owners and public were received.

#### **SPECIAL AND UNUSUAL CIRCUMSTANCES**

The dwelling (duplex conversion), carport roof, and water tank encroachments into the respective minimum side and rear yards and minimum side yard open space were identified pursuant to a survey map or variance site plan map dated July 15, 2005. The applicants/owners filed the variance application to address or resolve building encroachment issues. The site plan map was prepared by a surveyor and shows the minimum building site area and dwelling (duplex conversion-OD 92-206), carport-roof eaves, water tank and other site improvements, "AS BUILT", upon "LOT 8". A small portion of the original dwelling built circa 1983 is situated within the minimum (north) side yard. The original dwelling was converted into a duplex pursuant to OD 92-206. It appears that the carport-roof eave built circa 1993 and replacement water tank built circa 2005 are within the property's respective minimum (south) side yard and attendant minimum side yard open space and minimum rear yard. The applicants or current owners became aware of these building issues within the property's minimum yards after a survey map was prepared for escrow purposes. No evidence was found to show indifference or premeditation by the previous owner or current owners or builders to deliberately create or intentionally construct the dwelling-carport and water tank improvements within the minimum yards required by the Hawaii County Zoning Code. It appears that the original dwelling, duplex/carport building conversion, and replacement water tank on "LOT 8" were constructed between 1983 and 2005 according to County records and the applicant's background report. It appears that building inspections of the premises by the respective agencies during the construction of the original dwelling and subsequent ohana building improvement (duplex conversion/carport addition, etc.) and relocated water tank on "LOT 8" did not disclose any building encroachment issues or building setback irregularities during construction.

#### **ALTERNATIVES**

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

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1. Removing the existing building encroachments or redesigning or relocating the respective buildings and water tank to fit within the building envelope prescribed by the Zoning Code.
2. Consolidation with portions of the adjoining property or Lots 7, 9, and 29 and resubdivision of the resultant lot to modify property lines and adjustment of minimum yards.

### **INTENT AND PURPOSE**

The intent and purpose of requiring building setbacks within subdivision are to assure that adequate air circulation and exposure to light are available between permitted structure(s)/uses and boundary/property lines.

According to the recent survey map, a small portion of the original dwelling built in the 1980s, carport roof eave, and replacement water tank were built within property's affected side and rear yard. It appears that the water tank and 10-20 year old building encroachments within the affected yards are not physically noticeable or visually obtrusive from the adjacent lots or detectable from Hana Street. It appears that these building encroachments do not depreciate or detract from the character of the surrounding neighborhood, public uses, and surrounding land pattern.

Therefore, it is felt that these building encroachments within the affected minimum yards identified on the variance application's site plan map will not detract from the character of the immediate neighborhood or the subdivision.

The subject variance application was acknowledged by letter dated October 6, 2005. Additional time to complete the variance background report was necessary. The applicant agreed to extend the date on which the Planning Director shall render a decision on the subject variance to on or before February 4, 2006.

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**

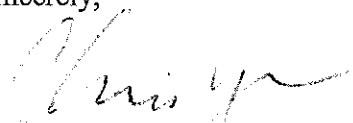
This variance request is approved subject to the following conditions:

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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 the duplex/carport roof and water tank will not meet Chapter 25, the Zoning Code's minimum side yard(s), minimum rear yard, and respective minimum side yard open space requirements according to the variance application's site plan map dated July 15, 2005. The approval of this variance allows the building encroachments within the minimum yards identified on the variance application's site plan map, to remain, "AS-BUILT", on the subject TMK property or "LOT 8".
4. Future building improvements and permitted uses on the subject tax map key property are 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:cd

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xc: Real Property Tax Office-Hilo  
OD 92-206