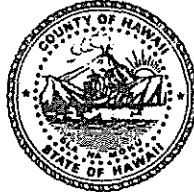


Harry Kim
Mayor



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

October 11, 2006

Mr. Laurence Shipstone
P. O. Box 7063, PMB 476
Ocean View, HI 96737

Dear Mr. Shipstone:

VARIANCE-VAR 06-066

Applicant: LAURENCE SHIPSTONE
Owner: LAURENCE SHIPSTONE
Request: Variance from Chapter 25, Zoning
Minimum yards
Tax Map Key: 9-2-028:028, Lot 7

After reviewing your application, the Planning Director certifies the approval of Variance-VAR 06-066 subject to variance conditions. The variance permits portions of dwelling to remain on the subject TMK property, "AS-BUILT", with a minimum 12 feet side yard and attendant minimum 9.5 feet side yard open space according to the variance site plan map submitted with the variance application. The variance is from the TMK property's minimum 20 feet side yard and attendant minimum 14 feet side yard open space required 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 TMK property, Lot 7 containing 43,608 square feet, is within Block "39", F.P. 692, portion of Hawaiian Ocean View Estates, Grant 2791, and situated at Kahuku, Kau, Hawaii.

The property is zoned Agricultural (A-1a) by the County and designated Agriculture or "A" by the Land Use Commission (LUC).

Mr. Laurence Shipstone

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2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on or about August 22, 2006. The variance application's site plan map is drawn to scale and prepared for the applicant/owner. The undated variance site plan map denotes portions of the "EXIST'G RESIDENCE" were built within a 20 feet side yard of subject TMK property.

The applicant's background report states in part:

"I am currently having the building plans drawn by an architect's draughtsman and in their investigations it has come to light that a small corner portion of the building, constructed by a previous owner(s), encroaches into a minimum side-yard setback area at the side of the lot. (Please refer to the enclosed diagram). This situation was not disclosed to me by the previous owner, the listing Realtor, Title Company or anyone else involved in my purchase of this house and I genuinely believe that nobody was aware of it. The house was built in 1991 and is complete i.e. double wall construction, all electrical and plumbing installed, decorated beautifully and with an extensively landscaped garden and therefore it is unfeasible and would be, I believe, an unfair imposition, to move or demolish the house in order to remove the encroachment.

The only person likely to be affected by the position of my house is my neighbour (sic) to the south-east of me, across the property line where the encroachment occurs. His name is Mr. Ronald Davis and he has expressed that he has no problem with the situation and has no objection to the improvements on my lot. Please see his written note of approval enclosed herein.

My immediate plans for the property are to make whatever improvements the architect specifies in his report including the installation of hurricane strapping, some minor structural requirements, installing built-in closets in the bedrooms and possibly more. This work and the fees for the architect and the inspections etc. for the permitting process represent a considerable financial investment on my part. Hopefully you can see my positive intent and commitment to bringing my home up to current codes and will legitimize the existing dwelling and associated site improvements."

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 fencing, and landscaping, etc. along or straddling common boundary lines. (Refer to variance conditions).

3. **County Building Records:**

County building records show a Building Permit (905758) and Mechanical (M931547) or Plumbing Permit were issued to subject TMK property in 1990. However, according to the applicant, it appears that the previous owner or builders deviated from original approved detailed building construction plans and building permit issued to construct a dwelling on the TMK in 1990.

4. **Agency Comments and Requirements-VAR 06-066:**

- a. The State Department of Health (DOH) memorandum dated September 15, 2006 states:

"Wastewater Branch has no objections to the proposed project. However, as we have no information on existing wastewater systems, we are unable to provide comments. Please have your engineer or contractor submit a completed cesspool information card identifying the location of all wastewater systems and their relationship to existing and/or proposed property lines."

- b. The Department of Public Works (DPW) memorandum dated September 20, 2006 states in part:

"NO COMMENTS"

5. **Notice to Surrounding Property Owners.** Proof of mailing notices to surrounding property owners was submitted to the Planning Department. For the record, the first and second notices were mailed on August 17, 2006 and September 5, 2006, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on September 1, 2006.

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. The following letter was submitted with the variance application:

- 6a. Letter endorsing the applicant's variance application signed by Ronald R. Davis and Erlinda E. Davis dated "8-15-06" of TMK: 9-2-028:028, Lot 8.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The applicant, on behalf of the current owners, submitted the variance application to address or resolve the dwelling encroachments within a minimum side yard. The variance application's site plan map denotes the position of the dwelling improvements, "AS BUILT", on "LOT 7". It appears that the applicant and current owner became aware of building encroachment into the property's side yard after escrow.

It appears that the original owner or builder did not construct the dwelling in accordance with the plans and building permit issued to subject TMK property circa 1990. The current owner was aware of the deviation from the originally approved construction plans or construction irregularities when he purchased the property and was proceeding to file amended building plans with County. The encroachment issue within the property's minimum 20 feet side yard was revealed during the preparation of the revised building plans and plot plan.

ALTERNATIVES

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

1. Remove the building encroachments or redesigning or relocating the dwelling to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of Lot 7 with a portion of the adjoining lot (TMK: 9-2-028:029, Lot 8) 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.

It appears that the subject building encroachments constructed approximately 15 years ago within the minimum side yard are not physically and/or visually obtrusive from the adjacent property (Lot 8) or privately owned rights-of-way. It appears that these 15 year old building encroachments do not depreciate or detract from the character of the surrounding neighborhood and surrounding land patterns. Therefore, it is felt that these building encroachments into the affected side yard identified on the variance application's site plan map will not detract from the character of the immediate neighborhood or the subdivision.

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 dwelling constructed on "LOT 7" will not meet the minimum side yard and attendant side yard open space requirements pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map. The approval of this variance permits the dwelling improvements to remain, "AS BUILT", on the subject TMK property in accordance with the variance site plan map or "plot plan" in the subject variance file.

The applicant or current owner shall address the status of the "open" or original Building Permit-905758 issued to subject TMK property by the DPW-Building Division and verify the cesspool location and improvements on the TMK installed pursuant to Plumbing Permit-M931547 with the State of Hawaii-Department of Health. The "open" building permit together with any other amended construction permits required by the DPW-Building Division to permit the existing dwelling improvements to remain on subject TMK property, "AS-BUILT", shall be addressed or secured by the applicant or current owner on or before March 31, 2007.

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.

Mr. Laurence Shipstone

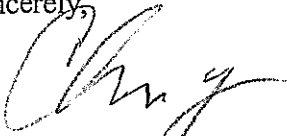
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5. Future or new building improvements and permitted uses shall be subject to State law and County ordinances and regulations pertaining to building construction and building occupancy.

Should any of the foregoing conditions not be complied with, the Planning Director may proceed to declare this Variance Permit null and void.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

WRY:cd

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xc: Real Property Tax Office-(Kona)

Ref. 4/11/07
Ltr. rec'd. 5/2
Applying for B.P.
Need copy of
new DP No. for record /
for file - to satisfy condition
∴ Review Var conditions
Ltr
to - indicate compliance.