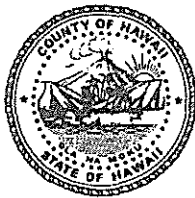


Harry Kim
Mayor



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

December 27, 2006

Mr. Virgil J. Stuck
92-2727 Anuenue Drive
Ocean View, HI 96737

Dear Mr. Stuck:

VARIANCE-VAR 06-091

Applicant: VIRGIL J. STUCK

Owner: VIRGIL J. STUCK

**Request: Variance from Chapter 25, Zoning
Minimum yards**

Tax Map Key: 9-2-181:043, Lot 27

After reviewing your application, the Planning Director certifies the approval of Variance-VAR 06-091 subject to variance conditions. The variance permits portions of a 1-story storage building to remain on Lot 27, "AS-BUILT", with minimum 6.5 feet side yard and attendant minimum 4.00 feet + side yard open space in lieu of minimum 20.00 feet side yard and minimum 14.00 feet side yard open space according to the applicant's site plan map submitted with the variance application. The variance is from the TMK property's minimum side yard and attendant minimum 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 27 containing 43,608 square feet, within Block 343 of Hawaiian Ocean View Estates, File Plan 1011, portion of Grant 2791, is situated at Kahuku, Kau, Hawaii. The subject property's street address is 92-2727 Anuenue Drive.

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

2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on October 31, 2006. The variance application's site plan map is drawn to scale. The variance site plan map denotes portions of an accessory building or BARN/STORAGE/EQUIPMENT RM." is within the subject TMK property's minimum 20 feet side (east) yard.

The applicant's background states in part:

"The structure is within the setback and is 6 feet from the property line. My daughter Brianna Beck owns the property adjoining my property, TMK 3-9-2-181-044. She has forwarded a letter which I am including in this request for a variance. She has indicated in the letter that she has no problem with the location of the structure. The structure was built without a permit and I am in the process of applying for the "Amnesty Permit" that the county has offered to residents of Hawaii county (sic). I want to honestly address this issue and get right with the county and bring the structure up to code.

I am asking the County Planning Dept. for their approval of the variance as it would be too difficult to move the structure the needed 14 feet to the east. I need to address this issue with you and hopefully it can be resolved before I can proceed further with the "Amnesty Permit" process."

Support Letter. The above referenced letter signed by Brianna L. Beck attached to the variance application states in part:

"There is no problem at all that the farm structure or (outbuilding) located on property TMK (3)/9-2-181-043 is within the setback bordering my property located at TMK (3)/9-2-181-044."

Note: The variance site plan map indicates the relocation of water tank within the building envelope. The variance request does not address the location or position of a dwelling and other site improvements identified on the variance site plan map.

3. **County Building Records:**

County Real Property records indicate "No records found".

4. **Agency Comments and Requirements-VAR 06-091:**

- a. The Department of Public Works (DPW) memorandum dated November 21, 2006 states:

"We have reviewed the subject application forwarded by your memo dated November 6, 2006 and have no comments or objections to the request."

- b. The State Department of Health (DOH) memorandum is dated November 27, 2006. (Refer to the DOH memorandum in the variance file).

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 October 30, 2006 and November 16, 2006, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on November 14, 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.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The applicant and current owner submitted the variance application to address and resolve the un-permitted buildings and address the building encroachment constructed into the property's minimum 20 feet side yard. The variance application's site plan map denotes the location of the dwelling, accessory building, and other site improvements, "AS BUILT", on the subject TMK property. The current owner became aware of building encroachment issues after the County declared an "Amnesty" policy for un-permitted building. The applicant background report states in part: "I want to honestly address this issue and get right with the county and bring the structure up to code"

It appears that all building improvements denoted on the variance site plan map were constructed without a building permit(s). The applicant/owner is seeking the necessary building permits pursuant to an "Amnesty" policy approved by the County. To date, it appears the County or DPW never cited the applicant or current owner for any un-permitted building(s) constructed on the subject TMK property.

ALTERNATIVES

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

1. Demolish the un-permitted building improvements or relocate the "un-permitted" building within the correct building envelope prescribed by the Zoning Code with an approved DPW-Building Permit.
2. Consolidation of Lot 27 with adjoining lot (TMK: 9-2-181:044, Lot 26) 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 building improvements on the subject TMK property are not physically and/or visually obtrusive from the adjacent property (Lot 26) or privately owned right-of-way. It appears that these building improvements constructed into the property's minimum side yard do not depreciate or detract from the character of the surrounding neighborhood and surrounding land patterns. Therefore, it is felt that these building encroachments within 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 an accessory building constructed without a building permit on the subject TMK property was constructed into the minimum side yard and side yard open space pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map. The approval of this variance permits portions of this building to remain, "AS BUILT", on the subject TMK property or "27" according to the variance site plan map in the subject variance file.

The applicant or current owner shall secure the "after the fact" building permits for the buildings on the subject TMK property from the DPW-Building Division (Kona). The required building permit(s) and/or other construction permits issued to subject TMK property shall be closed or "finaled" by the DPW-Building Division prior to sale of the property or transfer of title of the property by the current owner(s) to others.

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.
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.

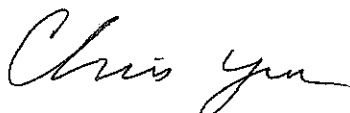
Mr. Virgil J. Stuck

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December 27, 2006

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/DSA:cd

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xc: Real Property Tax Office-(Kona)