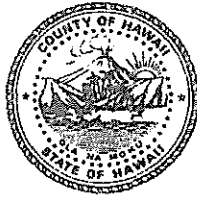


Harry Kim  
Mayor



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

February 13, 2007

Mr. Gregg Kashiwa  
Project Planners Hawaii  
5375 Kalanianaʻole Highway  
Honolulu, HI 96821

Dear Mr. Kashiwa:

**VARIANCE-VAR 06-094**

**Applicant:** PROJECT PLANNERS HAWAII  
**Owner:** EDWARD A. SWANSON  
**Request:** Variance from Chapter 25, Zoning  
Minimum yards

**Tax Map Key: 9-2-032:039, Lot 32**

After reviewing your application, the Planning Director certifies the approval of Variance-VAR 06-094 subject to variance conditions. The variance allows a portion of a "WATER CATCHMENT TANK" or accessory building to remain on Lot No. 32, "AS-BUILT", with a minimum 8.91 feet side yard in lieu of minimum 20.00 feet side yard and minimum 14.00 feet side yard open space according to the applicant's background report and revised variance site plan map signed and dated September 20, 2006. 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 No. 32 containing 43,608 square feet, within Block No. 44 of Hawaiian Ocean View Estates, File Plan 692, portion of Grant 2791 to C. C. Harris, is situated at Kahuku, Kau, Hawaii. The subject property's street address is 92-1873 Ocean View Parkway.

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 December 1, 2006, amended list of surrounding property owners on December 7, 2006, and forwarded additional (fax) submittals on or about January 30, 2007. The variance application's original site plan map original is drawn to scale and prepared by Pattison Land Surveying, Inc. Subsequent to acknowledgment of the application, Pattison Land Surveying, Inc. and applicant forwarded a revised variance site plan map dated-"Revised: September 20<sup>th</sup>, 2006" denoting the 8.91 feet distance between the edge of the "WATER CATCHMENT TANK [Height = 6.00 Ft.]" and affected boundary (side) line of "LOT NO. 32". A portion of the dwelling's 12,000 gallon water tank was constructed 11.09 feet into minimum 20 feet (westerly) side yard of Lot 32 or subject TMK property.

The applicant's background report dated December 1, 2006 states in part:

Page 2. "Buyer purchased the property, unaware of the encroachment hereinafter described. Once accepted, the contract went into escrow where conditions of purchase were satisfied."

"Buyer (sic) [Realtor] requested an encroachment survey prepared by a licensed surveyor, common practice in recent real estate contracts, from the PO [Seller]. Final Building Division Inspection of said structure and improvements took Place on September 29, 2006, and occupancy was granted thereafter. No mention of setback encroachments were (sic) made by the Building Inspector. Further, Mr. Swanson now intends to live in said home, using it as his principal residence . . . henceforth."

"During this period an encroachment survey, prepared by Thomas G. Pattison of Pattison Land Surveying Inc, dated September 12, 2006 was completed showing an encroachment of the existent water catchment tank 7.5 feet into the side yard setback area on the northwest portion of said lot."

In addition to the above, the applicant forwarded (fax) a clarification letter dated January 29, 2007 and other submittals to the Planning Department.

The fax letter dated January 29, 2007 states in part:

"The discrepancy shown on the two encroachment surveys in your possession are explained as follows:

1. That the first map prepared by Thomas Pattison dated 9/21/06 stating no encroachments were found was initially given to my client Mr. Edward Swanson who in turn gave it to me to be used as the basis for the subject variance application. This map was used for the Application for Variance.
2. Said map originally stated that no encroachments were found, but after closer examination thereof, it was apparent that the water tank encroached into the side yard setback area. A second corrected Map dated 8/21/06 was requested showing the 8.91 foot encroachment (sic). I enclosed copies of both maps herewith to correct this misunderstanding. The existence of two maps confused the situation and may this submission rectify the confusion. Please contact me with questions and thank you for your patience on this matter."

**Note:** The original site plan map and revised variance site plan map do not identify the location of any landscaping improvements within the minimum yards of the subject TMK property.

3. **County Building Records:**

County permit records show 2-Building Permits (B2005-3157H, B2006-1825H), 1-Electrical Permit (E2005-2281K), and 1-Mechanical (M2005-1616K) or Plumbing Permit were issued to subject TMK property. It appears that the 1-story dwelling/lanai and steel water tank on subject TMK property were constructed between 2005 and 2006. These records indicate the 1-story dwelling/lanai and steel water tank improvements were inspected by the agencies and completed by October 24, 2006.

4. **Agency Comments and Requirements-VAR 06-094:**

- a. The Department of Public Works (DPW) memorandum dated January 10, 2007 states "NO COMMENTS".
- b. The State Department of Health (DOH) memorandum is dated January 19, 2007 (Refer to memorandum in variance file).

5. **Notice to Surrounding Property Owners.** Proof of sending notices to surrounding property owners were submitted to the Planning Department. According to the applicant's affidavit dated January 29, 2007 notices were mailed to surrounding property owners on December 28, 2006 and January 18, 2007, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on December 27, 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, on behalf of the current owner, submitted the variance application to address or resolve the water tank encroachment into subject TMK property's minimum 20 feet side yard. The original variance site plan map and revised variance site plan map dated September 20, 2006 were prepared and revised by Pattison Land Surveying, Inc. Both maps denote a portion of "WATER CATCHMENT TANK [Height = 6.00 Ft.]" is within a minimum 20 feet side yard of "LOT NO. 32". According to the applicant's background report, the current owner became aware of the encroachment issue during escrow. No evidence has been found to show indifference or premeditation by previous owner or builders to deliberately create or intentionally allow a portion of the water tank to be built into a minimum 20 feet side yard of subject TMK property.

According to County records, the 1-story dwelling and detached water tank building improvements on the property were constructed according to 2-building permits and other associated construction permits issued to subject TMK property. During construction of the 1-story dwelling and detached water tank (6.00 feet height) between 2005 and 2006, it appears that a portion of the water tank within the property's minimum 20 feet side yard and minimum 14 feet side yard open space went unnoticed by the agencies.

#### **ALTERNATIVES**

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

1. Remove the encroachment or relocate the 12,000 gallon water tank to fit within the correct building envelope prescribed by the Zoning Code.

2. Consolidation of Lot No. 32 with adjoining lot (TMK: 9-2-032:040, Lot 31) 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 water tank (6 feet height) constructed within a minimum 20 feet side yard is not physically and/or visually obtrusive from the adjacent property (Lot 31) or privately owned right-of-way (Ocean View Parkway). Therefore, it is felt that a portion of the water tank (6 feet height) identified on the original and amended variance site plan map within the affected minimum side yard of the subject TMK property will not detract from the character of the immediate neighborhood or the subdivision.

The subject variance application was acknowledged by letter dated December 18, 2006 and additional time to incorporate the applicant's recent letter and other submittals into the variance file was necessary. The applicant requested an extension of time to submit the revised submittals and agreed to an extension of time for the Director to render a decision to February 16, 2007.

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, this variance 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.

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3. Portions of the dwelling's "WATER CATCHMENT TANK" on the subject TMK property will not meet the subject TMK property's minimum side yard and minimum side yard open space requirements pursuant to Chapter 25, the Zoning Code, according to a revised variance site plan map signed and dated "9/20/06". The subject variance permits the "WATER CATCHMENT TANK [Height = 6.00 Ft.]" to remain, "AS BUILT", on the subject TMK property or "LOT NO. 32" according to revised variance site plan map dated September 20, 2006 in subject variance file.

The current owner shall install a minimum landscape hedge (at least 20 linear feet) or buffer within the affected side yard of Lot 32 between the 12,000 gallon water tank encroachment and affected side boundary line. This landscape hedge or "green screen" shall be installed to buffer the water tank encroachment within Lot 32's side yard from adjoining property-Lot 31. This minimum landscape hedge or buffer shall be located approximately 230 feet to 250 feet from the Ocean View Parkway right-of-way. The landscaping hedge buffer shall be planted within the affected side yard of Lot 32 before July 31, 2007 and expenses to maintain the minimum landscape hedge or buffer shall be borne by the current owner and future owner(s).

4. 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 null and void.

Sincerely,



CHRISTOPHER J. YUEN  
Planning Director

WRY:cd

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xc: Real Property Tax Office-(Kona)