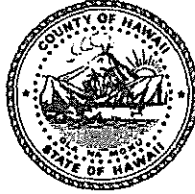


Harry Kim  
Mayor



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

July 3, 2007

Mr. Thomas Aronson  
and Ms. Betsey Rae Aronson  
13-3442 Oneloa Street  
Pahoa, HI 96778

Dear Mr. and Ms. Aronson:

**VARIANCE-VAR 07-037**

**Applicants:** THOMAS H. ARONSON, ET AL.  
**Owners:** THOMAS H. ARONSON, ET AL.  
**Request:** Variance from Chapter 25, Zoning  
Minimum yards

**Tax Map Key: 1-3-040:050, Lot 21**

After reviewing your application, the Planning Director certifies the approval of VARIANCE-VAR 07-037 subject to variance conditions. The variance allows portions of a "HOUSE", to remain with minimum 17.85 feet side yard to minimum 18.03 feet side yard and portions of detached "WATER TANK" and "SHED" with minimum 17.57 feet to minimum 18.98 feet side yard on the property, respectively, "AS-BUILT", in lieu of minimum 20.00 feet side yard according to the variance application's site plan map dated April 30, 2007. The variance request is from property's minimum yards pursuant to Hawaii County Code, Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum yards, (a), and Section 25-5-77, Other regulations.

**BACKGROUND AND FINDINGS**

1. **Location.** The referenced TMK property, Lot 21 containing 1.0 acre, is within Block 9, of Leilani Estates Subdivision, and situated at Kehialaka, Puna, Hawaii.

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

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2. **Variance Application-Site Plan**. The applicant submitted the variance application, attachments, and filing fee on May 14, 2007. The variance application's site plan map was prepared by surveyor and is drawn to scale. The variance site plan map, dated April 30, 2007, denotes portions of a "HOUSE" and detached "WATER TANK-SHED" are within a minimum 20 feet side yard of "LOT 21" or subject TMK property.

The applicant's background attachment dated May 11, 2007 in part:

"In the process of selling our house we were required to have our lot surveyed to make sure all buildings were within (sic) the confines of the allowable 20 foot set back. They were not. We are asking today for a variance so we may sell our house. The house, the pump house and the catchment tank all are in the set backs (sic). The most that they encroach is 2.5 feet."

**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 any landscaping, etc. along or straddling common boundary lines.

3. **County Building Records:**

County Real Property permit records show 2-Building Permits (020599, 020600), 1-Electrical Permit (E021132), and 1-Mechanical (M021335) or Plumbing Permit were issued to subject TMK property. It appears that the dwelling, and water tank including "pump" shed on "LOT 21" was built pursuant to these building and associated construction permits issued in 2002.

4. **Agency Comments and Requirements-VAR 07-037:**

- a. The State Department of Health (DOH) memorandum is dated May 25, 2007. (Refer to DOH memorandum in variance file.)

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

- b. The Department of Public Works (DPW) memorandum-comment is dated June 19, 2007. The DPW memorandum states in part:

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**“NO COMMENTS”**

- 5 **Notice to Surrounding Property Owners.** The applicant submitted copy of the first and second notice sent to surrounding property owners and proof of mailing both notices. According to the postal receipts, the notices were mailed on May 18, 2007 and June 5, 2007. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on May 31, 2007.
- 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 applicants-owners submitted the variance application to address the dwelling and water tank encroachment within the property's minimum 20 feet side yard. The variance application's site plan map was prepared by a surveyor and denotes the location of the dwelling and detached water tank improvements, "AS BUILT", on "LOT 21". The owners became aware of building encroachment issues during escrow. No evidence has been found to show indifference or premeditation by the owners or builder(s) to deliberately create or intentionally allow these building encroachments to be built within the property's affected side yard.

- It appears that the existing dwelling and detached water tank including pump apparatus were constructed according to 2-building permits and other associated construction permits issued to subject TMK property. During construction of the dwelling and detached water tank-shed, it appears that portions of the dwelling and water tank-shed within the affected side yard went unnoticed by the owner-builders and agencies.

**ALTERNATIVES**

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

1. Remove the dwelling and water tank-shed encroachments or redesigning or relocating the dwelling and water tank-shed to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of the subject TMK property Lot 21 with adjoining property (TMK: 1-3-040:050, Lot 20) and resubdivision to modify property lines or adjust minimum yards.

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### **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 portions of the dwelling and detached water tank including the shed constructed approximately 4 years ago within the minimum 20 feet side yard are not physically and/or visually obtrusive from the adjacent property (Lot 20) or privately owned right-of-way (Oneloa). It appears that these 4 + year old building encroachments do not depreciate or detract from the character of the surrounding neighborhood and surrounding land patterns; and, therefore, it is felt that the building encroachments into the property's 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 will not be materially detrimental to the public's welfare and will not cause substantial adverse impact to the area's character and 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 and detached water tank-shed located on "LOT 21" will not meet the minimum side yard pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map dated April 30, 2007. The approval of this variance permits the "HOUSE" and "WATER TANK and SHED" improvements to remain, "AS BUILT", on the subject TMK property or "LOT 21" according to the variance application's site plan map or survey map dated April 30, 2007.
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-(Hilo)