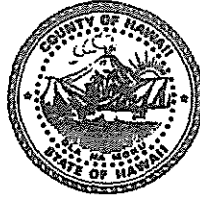


Harry Kim
Mayor



Christopher J. Yuen
Director

Brad Kurokawa, ASLA
LEED® AP
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County of Hawaii

PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-4224
(808) 961-8288 • FAX (808) 961-8742

May 15, 2008

Mr. Gary Shields
75-5486 Keke Street
Holualoa, HI 96725

Dear Mr. Shields:

VARIANCE-VAR 07-050

Applicant: GARY SHIELDS

Owners: GARY SHIELDS, ET AL.

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

Tax Map Key: 7-5-013:058, Lot 14

After reviewing your variance application, the Planning Director certifies the approval of Variance-VAR 07-050 subject to variance conditions. The variance permits conversion of the "DETACHED CARPORT" built circa 1991-1992 to remain upon the subject TMK property in accordance with a survey map dated and signed June 18, 2007. The applicant is requesting variance to allow portions of the 1-story detached bedroom/bathroom building to remain upon Lot 14 with a minimum 14 feet 8 inches to minimum 16 feet side yard and attendant minimum 12 feet 2 inches to minimum 13 feet 6 inches side yard open space in lieu of the property's required minimum 20.00 feet side yard and minimum 14.00 side yard open space according to the variance application's site plan or survey map and other plan submittals. The variance is from the TMK property's minimum side yard pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum yards, and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open space requirements, (a).

MAY 16 2008

BACKGROUND AND FINDINGS

1. **Location.** The referenced TMK property, Lot 14 containing 5.11 acres, is within Hualalai Farms, Unit I, being a portion of Land Commission Award 7716:5 to P. Keliikolani, and situated at Hienaloli 2nd, North Kona, Hawaii. The subject TMK property's address is 75-5486 Keke Street.

The property is zoned Agricultural (A-5a) by the County and designated Agriculture or "A" by the Land Use Commission (LUC).

2. **Variance Application-Site Plan.** The applicant submitted revised variance application, attachments, and filing fee on September 5, 2007. The variance application's site plan map is drawn to scale and prepared by Donald C. McIntosh, LPLS. The variance site plan map, signed and dated June 18, 2007, denotes portions of the "EXISTING DETACHED BEDROOM" was constructed into a minimum 20 foot side yard "UNIT 1, LOT 14" or subject TMK property.

The applicant's background information states in part:

"The building in question has been in place for well over ten years. Neighbors have said they think it has been there for around twenty years. The circumstances surrounding the property are:

- a. With my real estate partner, Sarah Crawford, I purchased this property in 2003. I have lived there since early 2004. The plan is to obtain a building permit to renovate it and add a garage.
- b. The building with the setback issue is a nonconforming detached-bedroom structure and was, to the best of my knowledge, unpermitted. A portion of the building encroaches into the 20 foot sideyard setback on the east side (mauka side) of the property by approximately 5 feet 4.25 inches. The distance to the property line is approximately 14 feet 7.75 inches. With the renovation, it will be incorporated into the building permit.
- c. We understand that detached bedrooms now are not allowed on agricultural land. The renovation will connect the detached bedroom to the house on the property, giving it interior access.

- d. When purchased, the property had no garage. The Hualalai Farms Association subdivision board has notified us that the house is not in conformance with the subdivision CC&R's because it has no garage. After renovation, the house will conform with subdivision CC&R's in this respect (sic)."

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 fencing and/or landscaping, etc. along or straddling common boundary lines.

3. **County Building Records:**

Hawaii County Real Property Tax Office records show 3-Building Permits (K07324, 915953, 926555), 3-Electrical Permits (EK06819, E926325, E926267), and 2-Mechanical (MK05795, M935097) or Plumbing Permit were issued to subject TMK property. According to these permits, the 2-story dwelling and detached carport were constructed upon subject TMK property pursuant to building and associated construction permits issued by the County-DPW between 1986 and 1993.

4. **Agency Comments and Requirements-VAR 07-050:**

- a. The State Department of Health (DOH) memorandum is dated October 12, 2007. Refer to DOH memorandum in variance file.

- b. The Department of Public Works (DPW) memorandum dated October 18, 2007 states:

"We reviewed the subject application and our comments are as follows:

Building shall conform to all requirements of code and statutes pertaining to building construction, (see attached memorandum from our Building Division).

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The DPW-Building Division memorandum dated October 17, 2007 states I part:

“Approval of the application shall be conditioned on the comments as noted below.

All new building construction shall conform to current code requirements.”

5. **Notice to Surrounding Property Owners.** Proof of mailing both notices sent to surrounding property owners was received by the Planning Department on May 12, 2008. According to the mailing receipts, it appears that first notices were mailed on or about July 6, 2007 and August 30, 2007 and a second notice was mailed on January 3, 2008, respectively, to a list of surrounding property owners. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on October 9, 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 applicant and current owner submitted the variance application to address the “EXISTING DETACHED BEDROOM” position within the property’s minimum 20 feet side yard and subsequent modifications to convert “DETACHED CARPORT” into garage or bathroom/bath building circa 1992. The variance application’s site plan map denotes the location of the 2-story dwelling and detached bedroom building improvements upon the subject TMK property.

The “EXISTING DETACHED BEDROOM” denoted on the variance site plan map or survey map was originally permitted as “DETACHED CARPORT” according to Building Permit-915953. According to discussions with the applicant during a site inspection of the property, the owners are seeking a building permit to attach “EXISTING DETACHED BEDROOM” or bedroom/bath building to commence renovations of the original 2-story dwelling/garage building. The owners submitted a copy of detailed building plans including a revised site plan. According to permit records, the conversion

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of the carport into a garage circa 1992 and/or later conversion of the garage into detached bedroom/bathroom went unnoticed by the agencies. It appears that the current owner became aware of the encroachment issue after building plans to renovate the original dwelling including detached bedroom/bath building were submitted to the County agencies for a building permit; and, after the County declared an "Amnesty" policy for buildings or building renovations built without a County building permit.

ALTERNATIVES

Alternatives available to the applicant to correct and/or address the building encroachment within the affected side yard of the subject TMK property include the following actions:

1. Convert the detached bedroom back into carport or redesigning the building to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of Lot 14 with adjoining lot (TMK: 7-5-013:059, Lot 15) 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 detached carport or enclosure of the carport or conversion of the carport into a bedroom/bathroom went unnoticed by the agencies circa 1992. It appears that portions of the 16 year old building constructed into the affected 20 feet side yard; and, use of the garage as a bedroom/bathroom or living area for approximately 6 years does not depreciate or detract from the character of the surrounding neighborhood, agricultural uses, and surrounding land patterns. Therefore, it is felt that the 16 year old encroachment into the property's side yard or applicant's proposal to renovate 2-story dwelling and attach or incorporate detached bedroom with renovations of the original 2-story dwelling will not detract from the character of the immediate neighborhood or the subdivision.

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The subject variance application was acknowledged by letter dated September 27, 2008 and additional time was requested by the applicant to send notices to surrounding property owners. The applicant agreed for an extension of time to complete the variance background report and render a decision on the subject variance to May 16, 2008. 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 application is approved subject to the following variance conditions:

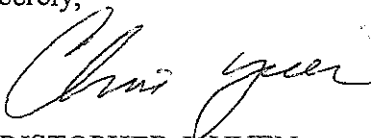
1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner(s), successors or assigns shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim, or demand for the property 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 "EXISTING DETACHED BEDROOM" constructed upon "UNIT 1, LOT 14" will not meet the minimum 20 feet side yard pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map. The approval of this variance permits "EXISTING DETACHED BEDROOM" to remain upon subject TMK property, as constructed, according to the variance site plan map.
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.

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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 subject Variance-VAR 07-050 to be null and void.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

WRY:cs
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xc: Real Property Tax Office-(Kona)