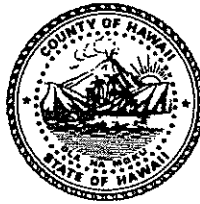


Harry Kim
Mayor



Christopher J. Yuen
Director

Brad Kurokawa, ASLA, LEED™ AP
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720
Phone (808) 961-8288 • Fax (808) 961-8742

April 30, 2008

PAUL H. MURRAY & ASSOCIATES, LLC
P. O. Box 1189
Hilo, HI 96721-1189

Gentlemen:

SUBJECT: VARIANCE-VAR 08-015
Applicant: PAUL H. MURRAY & ASSOCIATES, LLC
Owner: HANK CORREA REALTY
PROFIT SHARING PLAN, LLC
Request: Variance from Chapter 25, Zoning
Minimum yards
Tax Map Key: 1-1-037:020, Lot 7547

After reviewing your variance application, the Planning Director certifies the approval of Variance-VAR 08-015 subject to variance conditions. The variance permits portions of "DWELLING" to remain upon Lot 7547 with minimum 18.0 feet to minimum 19.2 feet side yard in lieu of minimum 20 feet side yard according to the variance application's site plan map dated February 27, 2008. 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, (a), and Section 25-5-77, Other regulations.

BACKGROUND AND FINDINGS

1. **Location.** The referenced TMK property, Lot 7547 containing 2.00 acres, within Crescent Acres Subdivision, Land Court Application 1053, Map 51, is situated at Keaau, Puna, Hawaii. The referenced TMK property's address is 11-3217 Hibiscus Street.

The property is zoned Agricultural (A-3a) by the County and designated Agriculture or "A" by the Land Use Commission (LUC).

2. **Variance Application-Site Plan.** The applicant, on behalf of the owner,

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submitted variance application, attachments, and filing fee on March 4, 2008. The variance application's site plan map is drawn to scale and prepared by Paul H. Murray & Associates, LLC. The variance site plan map, dated February 27, 2008 denotes portions of "DWELLING" were built into minimum 20 feet side yard of "LOT 7547" or subject TMK property.

The applicant's background information dated March 3, 2008 states in part:

"The Owners were unaware of and would not have discovered any problems affecting this dwelling until a modern survey was conducted on February 22, 2008 by Paul H. Murray & Associates, LLC revealing the setback violations. This property was purchased by Hank Correa Realty Profit Sharing LLC as an investment for the employees of Hank Correa Realty.

The violation of the side yard building setback is relatively small. The southeast corner of the subject dwelling intrudes 0.8-ft. into the side yard building setback. The southwest corner extends 2.0-ft. into the side yard building setback. The eaves along this portion of the dwelling allow for the minimum clear-space of 24-ft. for permitted projections. Please refer to the attached Site Plan for details. The side yard building setback violations are visually not perceptible from (sic) neighboring Lots or from the public view.

It appears from the site inspection and discussions with the contractor by the undersigned that the contractor committed an honest staking mistake. No malice and intent could be substantiated during the inspection. Neither the owners nor the contractor would have benefited as a result of the violation."

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 of the driveway and landscaping, etc. along or straddling common boundary lines.

3. **County Building Records:**

Hawaii County Real Property Tax Office building records show 2-Building Permits (B2005-2911H, B2006-1752H), 1-Electrical Permit (E2006-1175H), and 1-Mechanical (M2006-1026H) or Plumbing Permit were issued to subject TMK property. These records indicate both building permits are still active and that the 1-story dwelling/deck and water tank upon "LOT 7547" is or was constructed upon the subject TMK property pursuant to these building and associated construction permits issued by the DPW between 2005 and 2006.

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4. **Agency Comments and Requirements-VAR 08-015:**

- a. The State Department of Health (DOH) memorandum dated March 27, 2008 states:

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

- b. The Department of Public Works (DPW) response or comments dated April 11, 2008 states:

"NO COMMENTS"

5. **Notice to Surrounding Property Owners.** The applicant submitted copy of notices sent to surrounding property owners and proof of mailing notices to the Planning Department. According to these submittals, first and second notices were mailed on March 5, 2008 and March 24, 2008, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on March 28, 2008.

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 owner, submitted the variance application to address or resolve the dwelling encroachments within the property's minimum 20 feet side yard. The variance application's site plan denotes the location of the dwelling and water tank upon "LOT 7547". Pursuant to the applicant's background information, "The Owners were unaware of and would not have discovered any problems affecting this dwelling until a modern survey was conducted on February 22, 2008 by Paul H. Murray & Associates, LLC revealing the setback violations. This property was purchased by Hank Correa Realty Profit Sharing LLC as an investment for the employees of Hank Correa Realty." No evidence has been found to show indifference or premeditation by the owner or builders to deliberately create or intentionally allow portions of the dwelling to be built into the property's minimum side yard.

According to the applicant's background states in part, "It appears from the site inspection and discussions with the contractor by the undersigned that the contractor committed an honest staking mistake". It appears that the 1-story dwelling improvements is currently being

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constructed or built pursuant to 2 "active" building permit(s) and other construction permits issued by the DPW to the subject TMK property; and that portions of the dwelling constructed into the property's affected side yard went unnoticed by the contractor and agencies.

ALTERNATIVES

Alternatives available to the applicant or owner to correct and/or address the building encroachments constructed into the affected side yards of the subject TMK property include the following actions:

1. Remove the dwelling encroachments or redesigning or relocating the dwelling to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of Lot 7547 with adjoining lot (TMK: 1-1-037:019, Lot 7548) and resubdivision to modifying boundary or property lines and adjusting minimum yards, etc.

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 portions of the 1-story dwelling or encroachments built approximately 2 years ago within the subject TMK property's minimum 20 feet side yard are not physically and/or visually obtrusive from the adjacent property (Lot 7548 or privately owned right-of-way (Hibiscus Drive)). It appears that these 2-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 the portions of the dwelling constructed into the affected side yard denoted 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 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 a 1-story dwelling being constructed upon "LOT 7547" will not meet the property's minimum side yard pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map dated February 27, 2008. The approval of this variance permits the "DWELLING" improvements to remain upon the subject TMK property or "LOT 7547" according to the variance site plan map February 27, 2008.

The current owner shall contact the DPW-Building Division (Hilo) to address the "active" status of Building Permits- B2005-2911H, B2006-1752H issued to subject TMK property prior to issuance of any further building or construction permit(s). The current "open" building permits-B2005-2911H and B2006-1752H issued to subject TMK property shall be closed or "finaled" by the DPW-Building Division before any further building permit application(s) for interior or building additions or changes to the dwelling are approved by the agencies and the DPW. Any active or "open" building permits and/or construction permits issued to the subject TMK property shall be completed or "finaled" by the DPW prior to sale of the property or transfer of title of the property by the current owner to others.

4. Future or new building improvements or additions to the 1-story dwelling or permitted uses upon the subject TMK property shall be subject to State law and County ordinances and regulations pertaining to building construction and building occupancy.

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Chris Yuen".

CHRISTOPHER J. YUEN

Planning Director

WRY:mad

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xc: Real Property Tax Office-(Hilo)