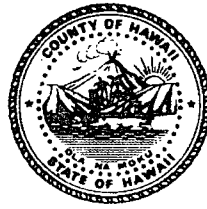


William P. Kenoi
Mayor



Duane Kanuha
Director

Bobby Command
Deputy Director

West Hawai'i Office
74-5044 Ane Keohokalole Hwy
Kailua-Kona, Hawai'i 96740
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County of Hawai'i PLANNING DEPARTMENT

East Hawai'i Office
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720
Phone (808) 961-8288
Fax (808) 961-8742

September 28, 2015

Robert & Sharri Thornton
131 Lukia Street
Hilo, HI 96720

Dear Mr. & Mrs. Thornton:

SUBJECT: Application: Variance – VAR-15-000267
Applicant: ROBERT AND SHARRI THORNTON
Owner: ROBERT AND SHARRI THORNTON
Request: Variance from Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum Yards, and Section 25-4-44, Permitted Projections into Yards and Open Space Requirements (Encroachment into Rear (Southeast) Yard Setback and Open Space Requirement)
Tax Map Key: 2-5-050:037; Lot 21

The Planning Director certifies the **approval** of Variance 15-000267, subject to conditions. The variance will allow the “as-built” storage shed to remain on Lot 21, with a minimum 4-foot rear (southeast) yard setback, in lieu of the required 20-foot rear yard setback and a 4-foot rear (southeast) yard open space in lieu of the required 14-foot open space requirement. The variance is from the subject property’s minimum 20-foot rear yard setback and 14-foot rear yard open space requirement. These exceptions are in lieu of the required 20-foot rear yard setback and 14-foot rear yard open space, as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-7, Minimum yards and Section 25-4-44 (a), Permitted projections into yards and open space requirements.

BACKGROUND AND FINDINGS

1. **Location.** The subject property contains approximately 10,001 square feet and is situated within the Hilo Country Club Estates Subdivision, Unit I, Kūkūau 2nd, South Hilo, Hawai'i. The subject property’s street address is 131 Lukia Street.
2. **County Zoning.** Agricultural – 20 acres (A-20a).

3. **State Land Use Designation.** Urban.
4. **Setback Requirements.** 20 feet front and rear; 10 feet for sides.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on December 30, 2014. The variance application's survey map was prepared by the owner/applicant and denotes that a portion of the single-family dwelling was built into the rear (southeast) yard setback and associated rear (southeast) yard open space.

The plot plan shows that portion of the storage shed encroaches 16 feet into the 20-foot rear (southeast) yard setback and 10 feet into the 14-foot rear (southeast) yard open space.

The encroachment leaves a minimum 4-foot rear (southeast) yard setback, in lieu of the required 20-foot rear yard setback and associated roof eave projection resulting with a 4-foot rear (southeast) yard open space in lieu of the required 14-foot rear open space requirement.

6. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that a building permit (55634) was issued on April 10, 1973 for a single-family dwelling consisting of 3 bedrooms, 2 baths, living room, kitchen, and dining area.
7. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum dated July 9, 2015.
(Refer to attached DOH memorandum)
 - b. No comments received from Department of Public Works – Building Division.
8. **Public Notice.** The applicant filed a transmittal letter with copy of the notices sent to surrounding property owners via USPS. According to USPS certificate of mailing receipts and affixed postal receipts, the first and second notices were mailed on July 3, 2015 and July 10, 2015, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on January 20, 2015.
9. **Time Extension.** The applicant's variance application was received on December 30, 2014 and additional time to review the application was required. The applicant granted the Planning Director an extension of time to issue a decision on the Variance Application until September 28, 2015.
10. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. No written comments or objections from surrounding property owners of the general public were received.

GROUNDS FOR APPROVING VARIANCE

Special and Unusual Circumstances

- (a) There are special or unusual circumstances applying to the subject real property which exist either to a degree which deprives the owner or applicant of substantial property rights that would otherwise be available, or to a degree which obviously interferes with the best use or manner of development of the property.*

The Variance Application meets criterion (a) for the following reasons:

The owner/applicant submitted the variance application to address or resolve the encroachment of the “as-built” storage shed into the 20-foot rear (northwest) yard setback and into the 14-foot rear (southeast) yard open space as required by the Zoning Code.

The plot plan prepared by the owner/applicant shows that the “as-built” storage shed encroaching 16 feet into the 20-foot rear (southeast) yard setback and projects 10 feet into the 14-foot rear (southeast) yard open space.

It appears that the owner was unaware of any setback requirements for a storage shed. Their main concern was that the placement of the storage shed did not limit their backyard area for family and pet play area.

No evidence has been found to show indifference or premeditation by the owners to deliberately create or intentionally allow the storage shed encroachment problems to occur.

The above special and unusual circumstances determine the owner was not at fault in creating the encroachment violation and requiring them to fix the encroachments would interfere with best use and development of the subject property.

Alternatives

- (b) There are no other reasonable alternatives that would resolve the difficulty.*

The Variance Application meets criterion (b) for the following reasons:

Alternatives available to the current owners to correct and/or address the building encroachments constructed into the affected rear yard of the subject property include the following actions:

Remove the building encroachments and/or redesign the storage shed denoted on the plot plan map to fit within the correct building envelope as prescribed by the Zoning Code. Any structural or design correction of the “as-built” storage shed to meet setback requirement would leave unattractive reconstruction scars.

Because the encroachment is within the rear yard setback, to consolidate the subject property with the adjoining rear property which is owned by another party and re-subdivide the property to modify property lines and adjust minimum front yard setbacks are not viable options.

Therefore, there are no reasonable alternatives to resolve the encroachment issue.

Intent and Purpose

- (c) *The variance is consistent with the general purpose of the district, the intent and purpose of this chapter, and the general plan, and will not be materially detrimental to the public welfare or cause substantial, adverse impact to an area's character or to adjoining properties.*

The Variance application meets criterion (c) for the following reasons:

The intent and purpose of requiring building setbacks for a lot are to assure that adequate air circulation and exposure to light are available between permitted structure(s)/uses and boundary/property lines.

No evidence has been found to show indifference or premeditation by the owners or builders to deliberately create or intentionally allow the building encroachment problems to occur.

Based on the foregoing findings and unusual circumstances, the applicant's request for variance 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.

This can be substantiated, to some degree, by the fact that no comments or objections were received from the surrounding property owners or general public in response to the Notification of Surrounding Properties Owners.

Therefore, the variance would be consistent with the general purpose of the zoning district and not be materially detrimental to the public's welfare or cause substantial adverse impact to the area's character or to adjoining properties.

PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

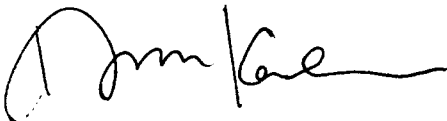
Based on the variance application's survey map, the single-family dwelling built on the subject property ("LOT 21") will not meet the minimum rear yard requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code).

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. Should the storage shed built on the subject property be destroyed by fire or other natural causes, the replacement structure shall comply with the Hawai'i County Code, Chapter 25, (Zoning) and be subject to State law and County ordinances and regulations pertaining to building construction occupancy.
4. No permit shall be granted to allow an ohana or farm dwelling upon the subject property, subject to provisions of the Hawai'i County Code, Chapter 25 (Zoning) 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.

Should any of the foregoing variance conditions not be complied with, the Planning Director may initiate proceedings to null and void Variance-15-000267.

Sincerely,



DUANE KANUHA
Planning Director

LHN:nci

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xc: Real Property Tax Office (Hilo)
Gilbert Bailado, GIS
Mark Iwamoto, Zoning Inspector

Robert and Sharri Thornton
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September 28, 2015

DAVID Y. IGE
GOVERNOR OF HAWAII



PLANNING DEPARTMENT
COUNTY OF HAWAII
915 ALI'I BLVD. RM 1-31

VIRGINIA PRESSLER, M.D.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. BOX 916
HILO, HAWAII 96721-0916

MEMORANDUM

DATE: July 9, 2015

TO: Mr. Duane Kanuha
Planning Director, County of Hawaii

FROM: Eric Honda *EH*
District Environmental Health Program Chief

SUBJECT: Application: Variance- VAR 15-000267
Applicant: ROBERT AND SHARRI THORNTON
Owner: ROBERT AND SHARRI THORNTON
Request: Variance from Chapter 25, Zoning, Article 5, Division 7
Section 25-5-76, Minimum Yards, and Section 25-4-44,
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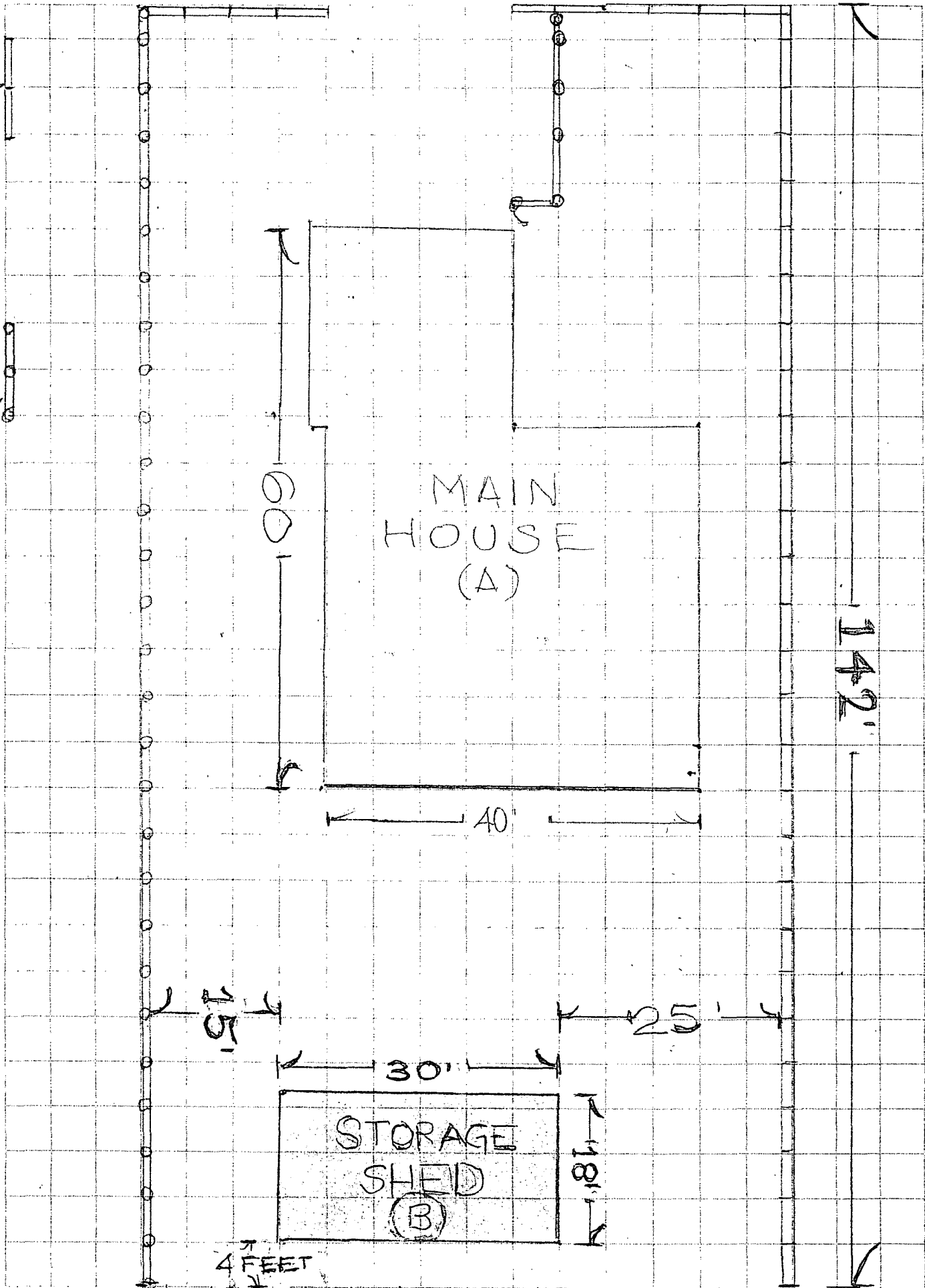
TMK: 2-5-050:037

Wastewater Branch found no wastewater/environmental health concerns with regulatory implications in the submittal.

WORD: VAR 15-000267.eh

099768

PANEL FENCE
CHAINLINK FENCE



MAIN HOUSE (A)

60'

40'

15'

30'

25'

STORAGE SHED (B)

18'

4 FEET

CEMET WALL

70' BACK OF LOT

142'