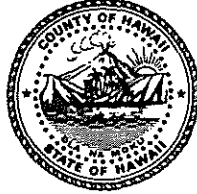


Stephen K. Yamashiro
Mayor



Virginia Goldstein
Director

Norman Olesen
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 • Fax (808) 961-9615

VAR 630

CERTIFIED MAIL

January 31, 1995

Mr. Allan Kroll
P.O. Box 299
Volcano, HI 96785

Dear Mr. Kroll:

Variance Application (VAR 94-63)
Petitioner: Allan Kroll
Variance From Minimum Side Yard Setback(s)
Tax Map Key: 1-9-15:004, Lot 77

FINDINGS AND RECOMMENDATION

After reviewing your variance application and the information submitted in behalf of it, the Planning Director hereby certifies existing dwelling and water tank "AS BUILT" with the existing building setback(s) shown on a site plan dated January 23, 1991, and November, 1994 as required in Chapter 25 (Zoning Code), Article 4 (RS, Single Family Residential Districts), Section 25-124 (a)(2)(B) (Minimum yards) and Chapter 25 (Zoning Code), Article 1 (General Provisions), Division 10 (Supplementary Yard and Open Space Regulations, Section 25-66 (Projections into required yards and open spaces).

The subject property's address is 19-4163 Iiwi Road, Volcano, Hawaii, 96785. The subject property is commonly referred to as tax map key parcel number 1-9-15:04, Lot 77 (TMK: 1-9-15:04, Lot 77).

The Planning Director has concluded that the variance setback request from the minimum side yard (s) and the minimum open space or clearspace requirement(s) should be approved, based on the following findings:

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SPECIAL AND UNUSUAL CIRCUMSTANCES

There are special and unusual circumstances that exist which would warrant or necessitate a waiver from the minimum side yard setback requirements for the single family dwelling situated and accessory structure(s) on the subject parcel with a stated land area of 9,375 square feet and width of 75.00 feet. The subject rectangular parcel is zoned Residential (RS-10). The minimum building site area and minimum building site average width is 10,000 square feet and 70 feet, respectively. The subject parcel's land area does not meet minimum lot area of the Zoning Code adopted in 1967. The existing dwelling's location was established in 1966 before the Zoning Code was adopted in 1967. A modern survey shows the dwelling and existing accessory building improvement does not meet the minimum side yard setback(s) and open space requirement(s).

The dwelling on the subject property is situated approximately 30 ± feet away from the Iiwi Road right-of-way and the location of the original dwelling and driveway was established in 1966. The records indicate building permits were issued in 1966 and 1983.

The Variance Request - Attachment received September 23, 1994, states:

"My name is Allan Kroll and my current mailing address is P.O. Box 299, Volcano, Hawaii, 96785. My home telephone number is 967-7187. My lot is located at 19-4163 Iiwi Road in Volcano Village by electric pole #14. My TMK is 3-1-9-15-4, Lot #77 and the lot size is 9,375 sq.ft. The TMK map with my lot denoted accompanies this application, along with a copy of the surveyor's map which was completed during January, 1991. I purchased my home in Volcano Village on 9/14/82. It was the first time I had ever owned property of any type. At that time the house was a 1 bedroom, 1 bath, with a carport. The carport consisted of a corrugated iron roof over a cement form. On 11/21/83 I submitted building plans for approval to construct a 2-story addition on the existing concrete form which was the carport at that time. I had all the necessary building plan approvals and permits. I assumed the carport was within the necessary legal boundary and setback which it was for the carport and it was not until recently I realized that the addition is 7.05 feet from the boundary on that one side instead of a 10 foot setback as required for a 2-story addition. I see now the original plans called for a 10 foot setback but I was unaware of the boundary proximity at the time of construction assuming since the carport was there the building would be okay, too. Therefore, I am requesting approval of a variance for my home and addition which was legally approved and permitted and which I thought was within the allowable boundary.

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Precedence for the approval of this request exists in the following actions which were approved and listed forthwith:

- (1) 573 Capri: 7-7-21-61 Existing 2-story dwelling with a sideyard setback in lieu of the minimum 10'.....2/3/94
- (2) 535 Haserot: 7-6-17-23 Allow the construction of a new 2-story family dwelling with a front yard setback of 11' and a sideyard setback of 5' in lieu of the minimum 15'.....10/13/93
- (3) 576 Lindley: 7-3-30-20 Existing 2-story with a sideyard setback of 8.6' and 7.8'.....3/7/94
- (4) 577 Rodero: 7-3-34-48 Existing 2-story with a 9.8' and 9.9' sideyard setback.....3/7/94
- (5) 493 Ulmer: 9-2-96-59 Existing 2-story dwelling with tapering sideyard of 7.47' in lieu of the required 20'.
3/25/93

It would cause undue hardship and expense to remove the addition. Thank you very much for considering this application."

Therefore, considering the foregoing facts, it is determined that there are special or unusual circumstances applying to the subject 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 subject property.

ALTERNATIVES

There are no reasonable alternatives in resolving the difficulty of the applicant. Alternatives available to the applicant include removing the existing building encroachment within the buildable area of the property prescribed by the Zoning and Housing Codes. The applicant would like to legitimize and retain the existing single family "AS BUILT" improvement(s) on the subject property.

Based on the above and foregoing considerations, the siting of the single family dwelling and water tank on the subject property in 1966 limits the interior and exterior design alternatives.

Therefore, while there may have been alternatives available to the applicant, they are deemed to be unreasonable and would place

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excessive demands on the petitioner when a more reasonable alternative is available by the granting of this variance application.

INTENT AND PURPOSE

The intent and purpose of requiring building setbacks within a subdivision is to assure that adequate air and light circulation is available between structures and property lines. The existing two (2) story dwelling's footprint on the subject property met with and complied with all setback requirements when it was originally constructed. The subsequent additions shown on the site plan and pictures submitted with variance application show the existing building improvement and the existence of the water tank. The existing building addition preserves the original dwelling's character and fits into the Single Family Residential character of the neighborhood.

The most directly affected property is the adjacent property identified as tax map key parcel number 1-9-15:04, Lot 79 (TMK: 1-9-15:04, Lot 79).

There were also no objections from any surrounding property owners to the proposed setback variance request (VAR 94-63). In addition to the foregoing, applicant Allan Kroll has a pending appeal requesting a variance from Section 11-18(a)(2)(Setback) of the Housing Code, Board of Appeals, Application BOA 94-23.

Based on the foregoing findings, this setback variance request would be consistent with the general purpose of the zoning district, the intent and purpose of the Zoning and Subdivision Codes and the County General Plan; will not be materially detrimental to the public's welfare; and will not cause substantial adverse impact to the areas character and to adjoining properties.

This variance request is approved, subject to the following conditions:

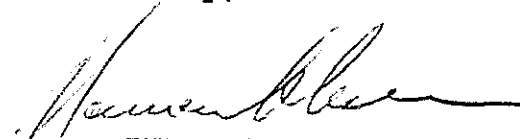
1. The applicant, its assigns or successors, shall be responsible for complying with all stated conditions of approval.
2. The approval of this variance is only from the Zoning Code.
3. The building improvement "AS BUILT" shall be subject to conditions stipulated by the Board of Appeals (BOA 94-23).

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4. Future building improvement shall be subject to State and County regulations pertaining to occupancy and building construction.

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

Sincerely,



VIRGINIA GOLDSTEIN
8 Planning Director

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cc: BOA (94-23)