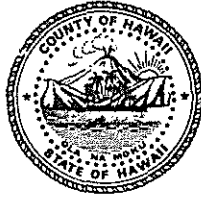


Stephen K. Yamashiro
Mayor



Virginia Goldstein
Director

Norman Olesen
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
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CERTIFIED MAIL
Z 095 323 637

September 16, 1996

Mr. and Mrs. Merrill R. Schreiber
c/o Mr. Kenneth Walton
213 Anela Street
Hilo, HI 96720

Dear Mr. and Mrs. Schreiber:

Variance Permit No. 772 (VAR 96-8)
Applicant: Merrill and Glorious Schreiber
Variance From the Minimum Side Yard Requirements
of Chapter 25, Zoning
Tax Map Key: 1-4-011:048, Lot 81

After reviewing your application and the information submitted on behalf of it, the Planning Director certifies the approval of your variance request to construct a new open deck patio or building projection within one (1) of the side yards with a two (2'-0") side yard in lieu of the minimum eight (8) foot side yard and four (4) foot open side yard required, pursuant to Article 4, RS, Single-Family Residential Districts, Section 25-156, Minimum yards, (a) (2) and Section 25-66, Projections into required yards and open spaces.

The subject property, Lot 81 is within the Kapoho Beach Lots Subdivision, being a portion of F.P. 498 and Kapoho-Halekamahina, Puna, Island and County of Hawaii. The property's address is 14-5036 Kapoho Beach Road and the parcel and existing building improvements thereon is commonly identified by the tax map key parcel and lot number, TMK: 1-5-035:020, Lot 81.

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FINDINGS AND RECOMMENDATION

The Planning Director has concluded that the variance request to allow a proposed open building projection within the affected side yard and respective open space requirements should be approved based on the following findings:

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject parcel, Lot 81, is a non-conforming sized "lot of record" containing 8,239 square feet. Lot 81 is zoned Single Family Residential (RS-10) by the County and designated Agriculture "U" by the State Land Use Commission (LUC). The property is within the County's designated Special Management Area (SMA).
2. The existing dwelling and related building improvements was issued Building Permit No. 880754, 892410, 912710, and 960244 by the Department of Public Works (DPW), Building Division. Subsequent to the issuance of the building permit, the electrical permit and plumbing permit were obtained from the DPW, Building Division. Building Permit No. 880754 was closed by the DPW, Building Division on January 19, 1989.
3. The map, prepared by the applicant, submitted with the subject variance application showing the dwelling and proposed open deck within the parcel's side yard. The applicant is requesting a variance to amend an active building permit to allow the construction of an open deck 2'-0" from the affected side property line.
4. The Zoning Code requires a site plan, drawn to scale, including appropriate map graphics and dimensions, to identify the existing site and proposed new building improvements. The minimum front, rear, and side yards denoted on a copy of a previous site plan submitted with the building application (B.P. 892410) to the Planning Department on October 18, 1989 in file SMAA 96-21 are incorrect.
5. The applicant statement submitted with the variance application states in part:

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"I have approved plans and a permit for a 6' x 32' deck, 8'11" off the ground. My house is 10' from the property on my neighbors' side.

I am requesting a variance to make my deck 8' wide instead of 6'. This will make my distance from the deck to the property line 2'.

The distance from my property line to my neighbors' house is 32' and my neighbors have no objections."

The applicant is asking for a variance to allow a permitted open deck building addition to project 2'-0" into the minimum 4'-0" open space requirement.

Therefore, considering the above and foregoing facts, it is felt there are special or unusual circumstances applying to the subject property which exist either to a degree which deprive the owner or applicant(s) 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: the re-siting or shifting of the two (2) story dwelling within the buildable envelope or, make extensive interior changes to relocate the open deck or place the open deck on an existing driveway situated within and along the opposite side yard property line. The changes to the existing dwelling may be economically unreasonable and would disrupt and displace the present location of existing landscaping, driveways, and carport access, and the spatial relationship between buildings and disrupt the function between the existing buildings and related site improvements.

The applicants are honestly trying to build an open deck addition legally and resolve the building setback problems given available buildable area or space on the property. The incorrect building setbacks denoted on a site plan submitted by the applicants and approved by the Planning Department on October 18, 1989 may have affected the siting of the existing access and the orientation of the existing buildings. No evidence has been found to show

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indifference or premeditation by the current owners or the permittees to deliberately or intentionally build the existing dwelling and related building improvements without the necessary building permits.

The Planning Department acknowledges there may be other design or building alternatives available to the owner/applicant recited above. However, these alternatives are deemed to be unreasonable at this time and would place excessive demands on the present owners when a more reasonable alternative is available by the granting of the subject variance.

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, carport, driveways, and related site improvements were installed beginning in 1989 and constructed under valid building permits issued the owners or permittees. The existing dwelling and subsequent site and building improvements were issued and inspected by the County under valid building permits. Building inspections performed during the course of and during the life of the building permits did not disclose any building or building irregularities.

The existing two (2) story dwelling and carport are permitted under the Zoning Code and the existing building improvements and uses are consistent and fit into the residential character of the surrounding neighborhood and surrounding land pattern and uses. No objection was received from the owners of the adjacent lot, Lot 82, TMK: 1-4-011:049, containing a dwelling on the 9608 square feet. Therefore, it is felt the proposed open deck encroachment into the one (1) of the side yards will not affect the existing dwelling on Lot 82 or detract from the character of the immediate neighborhood within the subdivision. The remaining portion of the existing dwelling complies with the minimum yards of the Zoning Code.

The subject variance application was deemed complete by the Planning Department on May 29, 1996 and an extension of time to August 31, 1996 to consider and render a decision of the subject variance application was mutually agreed upon.

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To date, no objections were received from the adjacent property of the surrounding property owners, the public, and participating government agencies to the subject variance request.

Based on the foregoing findings, this 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 area's character and to adjoining properties.


This variance request is approved subject to the following conditions:

1. The applicant(s)/owners, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicants/owners are proposing a open deck addition within the minimum side yard prescribed by the Chapter 25, Zoning. The applicants/owners, 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. The approval of this variance is only from the Zoning Code minimum side yard/open space requirements and any amendments to the existing active building permits and Housing Code requirements shall be discussed and secured from the DPW, Building Division.
4. The conditions of Special Management Area (SMA) Use Permit Assessment Application (SMAA 96-21) shall be complied with.
5. The permitted building improvements pursuant to the following building permits: B.P. 892410, B.P. 912710, and B.P. 960244 shall be completed, inspected, and closed by the DPW, Building Division.
6. Future building improvement shall be subject to State and County regulations pertaining to occupancy and building.

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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
Planning Director

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xc: Real Property Tax Office