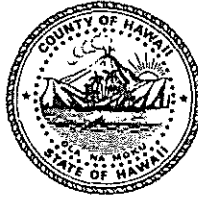


Stephen K. Yamashiro  
Mayor



Virginia Goldstein  
Director

Russell Kokubun  
Deputy Director

## County of Hawaii

### PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252  
(808) 961-8288 • Fax (808) 961-8742

#### CERTIFIED MAIL

Z 179 517 262

April 20, 1998

Mr. Brian De Lima, Esq.  
10 Shipman Street  
Hilo, HI 96720

Dear Mr. De Lima:

Variance Permit No. 915 (VAR 98-16)

Applicant: BRIAN J. DE LIMA, ESQ.

Owner: RICHARD A. MEYERS, ET AL.

Request: Variance From the Minimum Yards and Permitted Projections Into  
Yard and Open Spaces, Pursuant to Chapter 25, Zoning, December 7, 1996

Tax Map Key: 2-5-063:006

After reviewing your variance application and the additional information submitted, the Planning Director certifies the approval of your variance request to allow the retention of the existing dwelling with a side yard of 14 feet in lieu of the minimum 20 feet side yard pursuant to Section 25-5-76, Minimum yards, (a), and clearspace of 10 feet in lieu of the minimum 14 feet open space requirement pursuant to Section 25-4-44, Permitted Projections Into Yards and Open Spaces.

#### FINDINGS AND RECOMMENDATION

The Planning Director has concluded that the variance request from the minimum side yard and associated open space requirements should be approved based on the following findings:

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SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject parcel, Lot 6 containing 1.0157 acres is a portion of Lot B, Being a Portion of Royal Patent 5706 Land Commission Award 8521-B, Part 2, and Lot 254 of Land Court Application 1205, as shown on Map 73, of the Sunrise Estates, Unit 1-A, Situated at Kukuau 1st and 2nd, South Hilo, Island and County of Hawaii. The property is identified by TMK: 2-5-063:006 and is zoned Agricultural (A-20a) by the County and designated Agriculture "A" by the State Land Use Commission (LUC).
2. The dwelling and related site improvements are currently being constructed under Building Permit B No.980054 which was opened on January 13, 1998. Construction of the affected portion of the new dwelling has been suspended pending the request for the subject variance. In addition to the existing site improvements and landscaping improvements the applicants have submitted conceptual plans, drawn to scale, showing a proposed landscaping feature or berm between the dwelling and side property line.
3. The survey map dated November 5, 1997, drawn to scale, accurately identifies the location of the dwelling improvements. The site plan in the variance file denotes the distance between the proposed building wall and portion of the roof eave from the affected side property line.
4. The existing building improvements currently being constructed are being monitored by the DPW and other affected government agencies.
5. The Department of Finance-Real Property Tax memorandum dated March 31, 1998 states:  
  
"The subject property is being assessed at fair market value."  
  
"Real Property taxes are paid through June 30, 1998."
6. The Department of Public Works (DPW), memorandum dated April 1, 1998 states:

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- "1. Building shall conform to all requirements of code and statutes pertaining to building construction.
2. All development generated runoff shall be disposed on site and shall not be directed toward any adjacent properties.
3. All earthwork and grading shall conform to Chapter 10, Erosion and Sediment Control, of the Hawaii County Code.
4. All driveway connections to a County road shall conform to Chapter 22, Streets and Sidewalks, of the Hawaii County Code.
5. Applicant should be submitted to the Sunrise Estates Community Association's Board of Directors."
7. The State Department of Health, memorandum dated April 2, 1998 states:  
  
"The Health Department found no environmental health concerns with regulatory implications in the submittals."
8. One objection to the variance application was received from the surrounding property owners. No objection was received from any community association.

Therefore, considering the foregoing facts, the Planning Director has 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

1. The owners are trying to construct a new dwelling without altering or disturbing the existing natural topography, exposed lava rock formations, and original trees on the property. The owners wish to avoid disturbing three large exposed lava rock projections or outcroppings and retain the older native ohia trees between the living/kitchen room and bedroom "wing". The location of the natural lava

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rock features, site topography, and plant type influenced the design and placement of the proposed dwelling. During the construction of detached garage and living/kitchen room and site work occurring on the adjacent property, it was found the proposed bedroom "wing" could not be constructed without severely changing the character of the attractive exposed lava rock features and further removing several large ohia trees within the permitted building envelope.

2. The location of the detached garage and living/kitchen rooms have been constructed and established on the property. Any further land clearing at this time within the property and architectural alterations or design changes to change the dwelling's original design to conform with the minimum side yard and open space setbacks would create undue and excessive hardships for the applicants when other more reasonable options are available.

Based on the above cited considerations, there are no reasonable available solutions without excessive demands being placed on the applicants when a more reasonable alternative is available by the granting of this variance application.

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

#### 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 permitted structures and property lines. It appears the proposed dwelling's encroachment within the affected side yard was created and induced by a cumulation of construction or boundary discrepancies and misinterpretation of the minimum building yards prior to commencement of construction to construct the proposed dwelling. Only the bedroom "wing" or portion of the existing dwelling being constructed on the property will be established with a side yard of 14 feet in lieu of the minimum 20 feet side yard and clearspace of 10 feet in lieu of minimum 14 feet open space requirements. These encroachments will not diminish the ability for adequate light and air to circulate and will still provide adequate open space. The owners intend to preserve the existing exposed natural lava

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rocks and carefully introduce and integrate additional native landscaping materials between the bedroom and affected side property line. In view of the existing and unusual topography of the property and building design to cope with the unusual topography, the portion of the permitted dwelling proposed to be constructed will not depreciate or detract from the character of the surrounding neighborhood.

The subject variance application was deemed complete by certified letter dated March 25, 1998.

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.

This variance request is approved subject to the following conditions:

1. The owner, assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The owner, assigns or successors shall complete the construction of the proposed dwelling and close B No. 980054.
3. The approval of this variance shall be included in the conveyance document for the subject property and a copy of the recorded conveyance document shall be submitted to the Planning Department within a year from the effective date of approval of this variance, April 20, 1998.
4. The owner, successors or assigns shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim, or demand for property damage, personal injury, or death arising out of any act or omission of the owners, their successors or assigns, officers, employees, contractors, or agents under this variance or relating to or connected with the granting of this variance and building permits.

Mr. Brian De Lima, Esq.

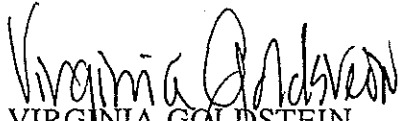
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5. Future building improvements and permitted uses shall be subject to State law and County ordinances and regulations pertaining to building construction and building occupancy.

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

Sincerely,

  
VIRGINIA GOLDSTEIN  
Planning Director

WRY:jkg

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cc: DPW-Hilo Building Division  
Real Property Tax Office