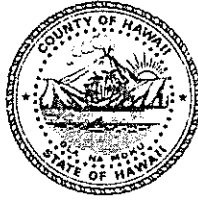


Stephen K. Yamashiro
Mayor



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 179 517 264

May 13, 1998

Mrs. Marjorie H. Bergh
P.O. Box 1089
Volcano, HI 96785

Dear Mrs. Bergh:

Variance Permit No.921 (VAR 98-23)
Applicant: MARJORIE H. BERGH
Owner: MARJORIE H. BERGH
Request: Variance From the Minimum Side Yard Requirements,
Pursuant to the Zoning Code, Chapter 25, Hawaii County
Tax Map Key: 1-9-018:036

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request to allow a portion of a dwelling and water tank constructed on the property within the affected minimum 15 feet side yards of the subject property. The dwelling is allowed to remain on the subject property with a 14.4 feet side yard, and the water tank is allowed to remain within the affected side yard with a 12.39 feet side yard in lieu of the respective minimum 15 feet side yard setbacks as required by the Zoning Code, Chapter 25, Article 5, Division 7, Section 25-5-76, Minimum yards.

The Planning Director has concluded that the variance request from the respective minimum side yards should be approved based on the following findings:

04598

MAY 14 1998

plu by M. Bergh
(address, sec)

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property containing 21,378 square feet is Lot 36 of Volcano Cymbidium Acres, Oloa, Puna, Hawaii. The property is zoned Agricultural (A-20a) by the County. The property is designated Agriculture "A" by the State Land Use Commission (LUC).
2. The original dwelling and other site improvements were originally constructed under building permit BP No.58451 issued by the Department of Public Works (DPW), Building Division in Hilo. A second building permit BP No. 810733 to install a solar unit was opened on March 20, 1981, and closed on July 31, 1989, by the DPW.
3. The recent plot or site plan drawing, dated March 4, 1998, is drawn to scale and identifies and denotes the buildable area within the rectangular shaped property. The site plan identifies and denotes the distances between the walls/corners of the existing dwelling and wall of the covered water tank to the respective side boundary lines. As such, the existing dwelling encroaches between .51 to .57 feet into the minimum 15 feet side yard and water tank encroaches 2.61 feet into the other minimum 15 feet side yard.
4. When approved by the Planning Department in 1974 the plans would have shown that all minimum building yards and setbacks were going to be adhered to by the proposed dwelling and water tank building improvements.
5. At the time the original building permits were approved, the owners received all necessary DPW approvals for the original dwelling and building addition.
6. It has been nearly 25 years since the original construction of the dwelling was approved by the DPW, and the current owner is trying to resolve a situation which they had no control over and have honestly prepared a certified survey to address and disclose the location of all building encroachments.
7. The Department of Finance-Real Property Tax memorandum dated April 13, 1998, states:

"The water tank variance has no effect on the owner's real property tax assessment."

"Real Property taxes are paid through June 30, 1998."

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8. The Department of Public Works (DPW) memorandum dated April 13, 1998, states in part:

"We have reviewed the subject application and have no comments to offer.
9. The State Department of Health (DOH) memorandum dated April 14, 1998, states:

"The Health Department found no environmental health concerns with regulatory implications in the submittals."
10. The applicant submitted proof that the first and second notice was mailed to the surrounding property owners and lessees on March 25, and April 14, 1998, respectively.
11. No written objections to the variance application were received from the surrounding property owners.

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 deprive the owner 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 applicant on her own volition is honestly trying to resolve this long standing encroachment problem which was not created by her. The investigation of this particular matter has not revealed any deliberate or intentional grounds in allowing the building and roof eave encroachments to occur.
2. Any architectural alterations or design changes to the existing dwelling or covered wood water tank to conform with the respective minimum side building yards would create undue and excessive hardship for the applicant 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.

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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. Portions of the existing dwelling encroaches between .51 to .57 feet into the required 15 feet side yard and by 2.61 feet into the other minimum 15 feet side yard. These building encroachments into the respective side yards and open space will not diminish the ability for adequate light and air to circulate and will still allow adequate open space. Therefore, while the Zoning Code requires minimum 15 feet side yards for this parcel, in this particular case, the building encroachments are relatively minor and will not visually or physically impact the adjacent and surrounding properties within this subdivision or neighborhood with the granting of this variance. The remaining portions of the existing dwelling and covered wooden water tank complies with the minimum yard requirements stipulated by the Zoning Code. The detached covered wooden water tank is not a habitable structure.

There were no objections from the surrounding property owners or public to the proposed variance request.

The subject variance application was deemed complete by certified letter dated April 7, 1998.

Based on the foregoing findings, this variance request would be consistent with the general purpose of the zoning district, 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:

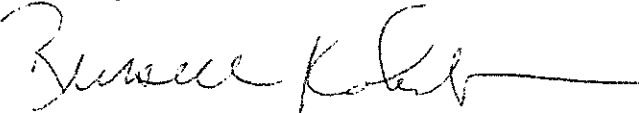
1. The owners, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner, successors or assigns shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim, or demand for the property damage, personal 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 and construction of the existing dwelling and garage.

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3. The approval of this variance is only for the existing building improvements established within the respective minimum side yards shown on the plot or site plan dated March 4, 1998 submitted with the variance application. Any future building additions to the affected portion of the dwelling or covered wooden water tank within the respective minimum side yards shall be subject to review under Plan Approval or comply with all requirements of the Zoning Code.
4. 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, May 7, 1998.
5. Future building improvements and permitted uses on the subject property 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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xc: Real Property Tax Office
William R. Ornellas, Esq.