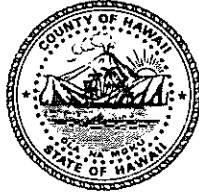


Stephen K. Yamashiro
Mayor



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 095 323 361

July 30, 1998

Mr. Lenard Allen Ruth
P. O. Box 534001
Hilo, HI 96728 96720

Dear Mr. Ruth:

Variance Permit No. 942 (VAR 98-31)
Applicant: LENARD ALLEN RUTH
Owners: LENARD ALLEN RUTH
Request: Variance From Minimum Yards, and Permitted Projections Into Yards
and Open Spaces, Pursuant to Chapter 25, of the Hawaii County Zoning Code
Tax Map Key: 2-8-018:039

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request to allow a portion of a proposed dwelling to be constructed on the property with a minimum 8 feet front yard in lieu of the minimum 15 feet front yard and open space of 5 feet in lieu of the minimum 10 feet open space required by Article 5, Division 1, Section 25-5-7, Minimum yards, (2), and Article 2, Division 4, Section 25-4-44, Permitted Projections Into Yards and Open Spaces, respectively.

FINDINGS AND RECOMMENDATION

The Planning Director has concluded that the variance request to allow a portion of the proposed dwelling within the required minimum front yard and associated open space should be approved based on the following findings:

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stc plus by Mr. Ruth

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SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The property consisting of 0.33 acre is a Remnant Parcel of Grant 1739 and Parcel 2 of Grant 13,557 to Pepeekeo Sugar Company, Situated at Honomu South Hilo, Hawaii. The property is zoned Single-Family Residential (RS-7.5) by the County and designated Urban "U" by the State Land Use Commission (LUC).
2. The applicant filed a preliminary consolidation map on April 20, 1998. Subsequently, a copy of a revised consolidation map, dated April 25, 1998, was received on June 26, 1998. The consolidated property consists of "0.330 ACRES".
3. The original survey map dated September 24, 1996, drawn to scale, submitted with the variance application identifies the location of the proposed dwelling, cesspool location, and driveway location via the Old Mamalahoa Highway.
4. Pursuant to a recent site inspection of the property, the proposed driveway entry location from the existing right-of-way and the proposed dwelling's foundation will be situated near and over the remains of an old quarry building originally constructed and established on the property before 1967.
5. Pursuant to a recent site inspection, it appears the existing neighborhood and the existing dwellings and piggery within 300 feet of the subject property were established or constructed before 1967. It appears the character of this neighborhood has not changed during the last 50 years. There are many native and exotic varieties of shrubs and trees planted along the Old Mamalahoa Highway and near the old concrete bridge over the Kaalikoli Stream.
6. The Department of Public Works memorandum dated May 29, 1998, states in part:

"We have reviewed the subject application and our comments are as follows:

1. Building shall conform to all requirements of code and statutes pertaining to building construction.
2. Any new construction or substantial improvements may be subject to the requirements of Chapter 27-Flood Control of the Hawaii County Code.

3. The Old Mamalahoa Highway is a County road with an existing right-o-way width of 40-ft. Consideration shall be given for a minimum 5-ft. future road widening setback, which will allow a minimum 50-ft. wide right-of-way, that is the minimum standard width for a County roadway.
4. All driveway connections to a County road shall conform to Chapter 22, Streets and Sidewalks, of the Hawaii County Code."
7. The Department of Health memorandum dated May 29, 1998, states:

"We have no objections to the proposed variance application. However, minimum setback requirements for the proposed cesspool needs to be maintained. The applicant has the option of applying for a variance to the rules in accordance with Chapter 342D, HRS."
8. The REAL- PROPERTY TAX CLEARANCE form for 3-2-8-018-039 dated April 27, 1998, submitted with the variance application states in part:

"This is certify that RUTH, Leonard (sic) Allen has paid all real property taxes due the County of Hawaii up to and including June 30, 1998."
9. The Planning Department received four (4) objection letters and several phone calls from the surrounding property owners. Concerns and objections cited in the letters received from the surrounding property owners allege that the size of the property is inadequate and that access from the Old Mamalahoa Highway to the proposed dwelling is not possible or available and other references related to land use.

The specific concerns and allegations received from the surrounding property owners were carefully weighed and considered pursuant to the Zoning Code. To date Mr. Ruth has received and reviewed all objection letters received and the foregoing Planning Department letters. Additional time was afforded to Mr. Ruth until July 31, 1998, to review the Planning Department's letters with enclosures.

Pursuant to previous Planning Department site inspections of the property and recent discussions with Mr. Ruth concerning the pictures of the property submitted with the variance application, it is understood that the proposed dwelling appears to be situated upon the remains of a foundation of a building

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which was once part of a quarry operation. Pictures of the property indicated that there was once an access via the Old Mamalahoa Road to an old garage structure which was originally situated on the property. The applicant understands the property is currently zoned single-family residential (RS) and is aware the piggery use was established prior to the adoption of the Zoning Code in 1967. To avoid the placement of any structural building improvements within the Kaalikoli Stream, the applicant is requesting permission to site a portion of the proposed dwelling within the minimum 15 feet wide front yard of the buildable area according to the site plan submitted with the variance application. Approximately 60% or approximately 420 square feet of the proposed 700 square foot dwelling footprint would comply with the minimum building yards and open space requirements.

The present owner submitted a copy of a recent site or plot plan, drawn to scale, which identifies the location of the existing Kaalikoli Stream and location of the proposed dwelling to be built on the subject property. The site plan identifies and denotes the distances between the wall and eave of the proposed dwelling from the affected front yard and the distances between the dwelling roof eave and the remaining property lines.

Therefore, considering the foregoing facts, circumstances, and field inspection of the existing site and building improvements, it is felt 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

There are no reasonable alternatives in resolving the difficulty of the owner. Alternatives available to the owner include constructing the proposed dwelling within the remaining buildable area prescribed by the Zoning Code. Approximately 60% of the proposed dwelling will be constructed within the prescribed building envelope and open space requirements. The proposed building's proportion and shape of the dwelling would be architecturally compatible and similar to the surrounding dwellings along the Old Mamalahoa Highway and within the immediate neighborhood. The proposed building addition will meet the minimum rear and side yard setbacks.

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

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on the present owner 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 are to assure that adequate air and light circulation is available between permitted structure(s) and property lines. The proposed setback variances will not hinder adequate light and air circulation around the proposed dwelling. In view of similar dwelling/carport combinations within the immediate neighborhood, the proposed dwelling will not depreciate or detract from the character of the surrounding neighborhood. It appears the proposed dwelling's location will not visually or physically adversely affect the rights of the property owners of the adjacent or surrounding properties. Therefore, it is felt the affected area of the proposed dwelling within the front yard will not detract from the character of the immediate neighborhood or the subdivision.

The subject variance application was deemed complete on April 27, 1998, and was acknowledged by Certified Letter dated May 21, 1998. However, due to the number of telephone inquiries and objection letters received, additional time was required by the Planning Department and other agencies to understand and respond to the variance application. Furthermore, the applicant was not able to review the statements and examine the issues or objections stated in the objection letter dated June 12, 1998, which included 4 signatures. Therefore, an extension of time was granted until July 31, 1998, to afford the applicant time to further review all the objection letters received and to consider the pending consolidation application and the Planning Department's response letters.

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. The effective date of this permit is July 30, 1998. The building construction plans together with the building permit application may be submitted to the Planning Department on or after August 30, 1998.

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2. The approval of this variance is only from the Zoning Code. The 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 owner or owners, their successors or assigns, officers, employees, contractors, or agents under this variance or relating to or connected with the granting of this variance pertaining to the construction of the proposed building addition.
3. The location of the proposed building addition to the existing dwelling will not meet the provision of the Zoning Code regarding minimum yards and corresponding permitted projections into yards and open spaces. The approval of this variance is from the Zoning Code only and allows the proposed building addition to be constructed on and within the subject property pursuant to the site plan submitted with variance application and/or meet current DPW building code requirements.
4. 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/RK:cjf
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xc: Real Property Tax Office