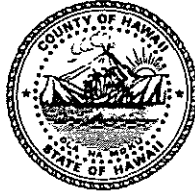


Stephen K. Yamashiro
Mayor



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 101 317 782

May 14, 1999

Mr. and Mrs. Nicholas Heinrich
P. O. Box 1
Hawaii National Park, HI 96718

Dear Mr. and Mrs. Heinrich:

VARIANCE PERMIT NO. 1003 - (VAR 99 - 024)

Applicants: DOROTHY HEINRICH, ET AL.

Owners: NICHOLAS HEINRICH, ET AL.

**Request: Variance From the Minimum Yards and Permitted Projections
Into Yard and Open Spaces, Pursuant to Chapter 25, Zoning,
Ratified April 6, 1999**

Tax Map Key: 1-5-058:040

After reviewing your application and the information submitted on behalf of it, the Planning Director certifies the approval of your variance request. Variance Permit No. 1003 allows the portions of an existing dwelling and water tank to remain within the affected side yards and open space "AS BUILT" in lieu of the minimum 15 feet and minimum open space of 10 feet as required by the Zoning Code, Chapter 25, Article 5, Division 7, Section 25-5-76, Minimum yards, Section 25-5-77, Other regulations, and Article 4, 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 from the minimum side yard and open space requirements should be approved based on the following findings:

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property containing 0.59 acre is Lot 490, Block 10, Land Court Application 1053, Keaau, Puna, Hawaii. The property's address is 15-901 Paradise Ala Kai Drive.

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2. It appears that the existing building improvements were constructed under four (4) building permits issued by the Department of Public Works (DPW), Building Division in Hilo.
3. It appears the site plans attached to the detailed building construction plans for the dwelling, garage, and water tank were reviewed and approved by the Planning Department and other affected government agencies. The required building inspections were conducted by DPW building inspectors and by representatives from other affected government agencies of all building improvements on the property.
4. The site plan drawing, drawn to scale and dated July 23, 1998, by Murray , Smith, & Associates, Ltd., identifies the existing dwelling, garage, and water tank on the subject property. The site plan include further notations by the applicant which identify the distance between the existing building improvements and the affected side yards.
5. The applicant's "REASONS FOR REQUESTING VARIANCE: EXPLANATION", states:
 - "1) A survey revealed to current owners that the existing home & catchment tank encroached on side setback requirements.
 - 2) The lot was developed to be consistent with the general purpose of the neighborhood and to utilize the natural features of the land. The approximate 15 _degree slope of the driveway allows views of the ocean from the street-please see photo #1. The post & pier construction of the home left lava intact on the oceanside of the property-see photo #2
 - 3) Moving existing water tank is not a feasible alternative as the location was determined due to the topography. Please refer to photos #3 & #4 which show lava outcropping which appears to have been used to try to secure the view of the tank from the street. Also note the mature palms and plumerias in the adjacent area. We do believe the previous owner made every effort to build the home to be harmonious with the area and to have minimal impact. A permit was granted to the previous owner to develop the property as it is today & we believe he was completely unaware of any setback problems. Please see photos #5 & 6 for a general view of the property.

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- 5) We are honestly attempting to address and correct a setback problem discovered after purchasing the property. We are seeking no changes or additions and wish to preserve the character of the lot as it is today.
 - 6) We therefore ask for a variance to be granted to allow the home & the water tank to remain in their current locations"
6. The Department of Finance-Real Property Tax memorandum dated April 8, 1999, in the subject variance file states in part:
- "There are no comments at this time
- Real Property taxes are paid through June 30, 1999."
7. The State Department of Health (DOH) memorandum dated April 12, 1999, in the subject variance file states:
- "The Health Department found no environmental health concerns with regulatory implications in the submittals."
8. The Department of Public Works (DPW) memorandum dated May 5, 1999, states:
- "The minimum setbacks shall be maintained as follows:
- Residential structures-3 ft. side, 3 ft.
Commercial structures-5 ft. side, 5 ft. rear
- Others: The exterior stairs on the northeast corner of the structure shall be one-hour fire resistive construction for any portion of the stairs closer than 3 feet to the property line."
9. No objections to the variance application were received from the surrounding property owners.

The present owners/applicants submitted a site plan which identifies the location of an existing dwelling and water tank. The site plan submitted identifies the distances between the dwelling and the affected side boundary lines. Portions of the existing dwelling and water tank were constructed within the property's two side yards.

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Therefore, considering the 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/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 owners/applicants. Alternatives available to the applicant include the following: Removing the existing building encroachments or relocate the water tank within the correct building envelope prescribed by the Zoning Code, and other similar design alternatives, etc. The removal of the building encroachments or the re-sitting, redesign, and remodeling, etc. of the existing dwelling would be economically unreasonable and may disrupt other existing site improvements.

The current owners, on their own volition, are honestly trying to resolve a recent building encroachment problem. No evidence has been found to show indifference or premeditation by the current owners or applicants to deliberately or intentionally allow the building encroachment problems to occur.

The Planning Department acknowledges there may be other design or building alternatives available to the owner/applicant recited above. However, these design and building alternatives are deemed to be unreasonable at this time and would place excessive demands on the present owners or applicants 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 existing building improvements were constructed by the previous owners under a series of four (4) building permits. Building inspections of the premises, during building construction and throughout the life of the building permits did not disclose any building setback irregularities. The current owners or applicants were not aware of the all encroachment problems until the modern survey was performed.

The circumstances which permitted the existing building improvements be built on the property are unique. The existing building encroachments have been built within both side yards. The existing building encroachments are not physically and visually obtrusive from the existing right-of-way. It appears the building encroachments do not depreciate or detract from the character of the surrounding neighborhood, public uses, and the existing and surrounding

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land patterns. It appears, the existing dwelling's and water tank "footprint" and building encroachments built and established recently within the property's side yard have not visually, physically or adversely affected the rights of the property owners of the adjacent or surrounding properties. Therefore, it is felt the existing building encroachments will not detract from the character of the immediate neighborhood or the subdivision. It appears the existing building encroachments on the property and within the affected side yards were created and induced by a accumulation of mapping and building discrepancies or interpretation of the minimum yards during building construction. Inspection of the property during the life of the building permits by government agencies did not discover any building encroachment or disclose any irregular building setback problems.

The subject variance application was acknowledged by certified letter dated April 5, 1999.

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 applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval. The effective date of this permit is May 14, 1999.
2. The approval of this variance is only from the Zoning Code. 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.
3. The location of the existing dwelling on the subject property will not meet Chapter 25, the Zoning Code's, minimum side yard and related permitted projections into yards and open space requirements. The approval of this variance allows the existing water tank identified on the plot or site plan dated July 28, 1998, to remain on the subject property.

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4. 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/RK:pak

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c: Real Property Tax Office